Consumer Rights in the Digital Age

World Consumer Rights Day Forum

“Legal Regime for Consumers in the Digital Age”

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Institute for Policy Studies

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Overview

- Sri Lankan Digital Landscape – Overview & International Ratings
- Enabling Legal Environment for Digital Commerce
  - Electronic Transactions Act No. 19 of 2006
  - Payment and Settlement Systems Act & Mobile Payment Licensing
- Digital Commerce – Protecting the Consumer
  - Consumer Affairs Authority Act (2003) – Protection for Consumer in the Digital Age
  - Data Protection – current landscape and Subject specific legislation
- Conclusions
Sri Lankan ICT Sector

- ICT Sector - 5th Largest Revenue Earner for Sri Lanka
- First in South Asia to Liberalise Telecom Sector and introduce competition (Telecommunications Act No. 25 of 1991) - 4G Mobile Providers, 19 ISPs, 5 gateways --- On-going Consolidation
- Mobile Usage – Over 107% (*More mobiles and toothbrushes*) !!!
  - 1st in South Asia to introduce Mobile Payment Regime
- BPO / KPO Sector growth – Accounting outsourcing. Legal outsourcing -- 30% per annum growth in IT workforce
- Rapid pace of Digitization and E-Governance Adoption
- Sri Lanka is ranked No 1 in South Asia in Networked Readiness Index (NRI)
Network Readiness Index (NRI)
UN e-Gov Index – Sri Lanka Status

• Leapfrogged 41 places since 2012
• Ranked 6th in ASEAN following S. Korea, Singapore, Japan, Malaysia & China
• Ranked 7th globally in ‘High On-line Service Performance, relative to income’
• Ranked 37th in Online Service Sub index
• Ranked 38th in e-Participation.
• Achievements under “e-Sri Lanka Development Program”
  – A Digital Disruption Strategy implemented in an Organized manner
"The Sri Lankan e-commerce industry has shown promise during the last five years, and experts predict the market is likely to grow from 1% of annual consumer sales in 2015 to 3% in 2018" – Daily News  

<table>
<thead>
<tr>
<th>Variable</th>
<th>2014</th>
<th>2015</th>
<th>2016 Q1-Q3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of Credit &amp; Debit cards in use</td>
<td>14,624,150</td>
<td>16,388,86</td>
<td>18,317,21</td>
</tr>
<tr>
<td>Total Volume of Transactions (Rs. Million)</td>
<td>46.3</td>
<td>57</td>
<td>49.9</td>
</tr>
<tr>
<td>Total Value of Transactions (Rs. Billion)</td>
<td>196.5</td>
<td>237.3</td>
<td>211.1</td>
</tr>
</tbody>
</table>

Sri Lanka online sales (estimated) – $0.02 Bn

<table>
<thead>
<tr>
<th>Variable</th>
<th>2015</th>
<th>2016 – Q3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Volume of Transactions</td>
<td>1,980,28</td>
<td>891,456</td>
</tr>
<tr>
<td>Total Value of Transactions</td>
<td>11,297</td>
<td>3,924</td>
</tr>
</tbody>
</table>

Sources:
- Nielsen Sri Lanka 2016
Enabling Legal Environment for Digital Commerce
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
  – Covers all forms Electronic Transactions (e-commerce, e-business, e-Government, EDI etc..)

• Legislation enacted – 7th March 2006
• Operational – w.e.f 1st October 2007
Electronic Transactions Act No. 19 of 2006
Policy Framework

• Based on UNCITRAL Model on e-Commerce 1996 and UNCITRAL Model Law on e-Signatures 2001)
  – Ensures functional equivalence, Party autonomy and Technology Neutrality

• Includes features of the UN Convention on the Use of Electronic Communications in International Contracts (UN ECC)
  – Sri Lanka took part in its negotiation.

• Legal basis for Digitization and e-Government
• Sector specific Digital Certificate Authorities established
  – Banking, Govt Transactions & Commerce (Creates Trust for Consumers)
• Admissibility of Electronic Evidence
New admissibility criteria based on regularity of business records – Section 21 (2)

Presumption on the contents of e-documents – Section 21 (3)

Broad Admissibility Framework

- Commercial High Court Decision in Marine Star Case (2007) – Admissibility of SMS
- Commercial High Court Case in Millennium IT (2012) – Admissibility of Contents of a website as an “Electronic Record”
- People’s Leasing Company VS M I Fernando – (15th February 2016) – Computerised Accounts Ledgers admitted as “electronic records”
UN ECC & Electronic Transactions Act Amendments (2017) – Sri Lanka

- Sri Lanka - Signatory to ECC along with China & Singapore
- Ratified on 7th July 2015 – application w.e.f 1st Feb 2016

- ETA Amendments (2017) – Greater confidence for e-Commerce
  - Definitions in ETA similar to UN ECC
  - “Location of Party’s business” (Not dependent on factors like domain address, location of servers and place where system is accessed)
  - “Technology Neutrality for e-Signatures” & Cross border recognition
    - Based on “Substantive equivalence” standard
  - Greater clarity for “dispatch & receipt of a communication”
  - Online Web based Sales – “Invitation to make offers”
  - Use of “automated message systems” for Contract formation
  - Ability to “correct input errors”
Benefits of Ratifying UN ECC for Sri Lanka

- Recognition of having modernised e-Commerce legislation
- Provide ultimate legal certainty to cross border Digital Commerce when a party is located in Sri Lanka
  - Would help market Sri Lanka more effectively for FDI
- Bring clarity and predictability to the use of electronic communications in cross border trade with other contracting states
  - Facilitating cross border remittances through Electronic Payments channels, thus ensuring administrative efficiency
  - Cross border mobile commerce
- Create more binding uniform framework between Singapore, Australia, China etc - UN ESCAP Trade Facilitation Agreement
- Legal Basis for Singapore – Sri Lanka FTA
Digital Commerce & Payments
Mobile Payment Regime

• Mobile Commerce influenced by the Electronic Transactions Act No. 19 of 2006

• Payment & Settlement System Act No. 28 of 2005
  – SLIPS and CITS
  – 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
  – Mobile Payment Guidelines No 1 of 2011
    • Governs Bank-led Mobile Payment Services
  – Mobile Payment Guidelines No. 2 of 2011
    • Custodian account based system for Non-Bank Service Providers
  – Mobile Payment Regulations - June 2013

• Creates Consumer Trust & Confidence in Digital Commerce
Digital Commerce

“Protecting the Consumer”
Cyber security and Cybercrime are inter-related
  Two sides of the same coin
  “Cybercrime” – no clear definitions !!
  Is a “term” for any unlawful activity where ICT devices and tools are used for the Commission of an offence

US Dept Justice – uses an expanded definition to include “any illegal activity where Computers are used for the storage of evidence”

Cybercrime is not only about attacks against Computers
  But a threat to Core Values of Democratic Societies – data theft, attacks against media, civil society organisations, parliaments and individuals, governments etc (even racism, radicalisation, terrorist misuse of information systems) – “Traditional Notion”

Other offences where Electronic Evidence is stored on Computers or servers in the Cloud. Such Evidence is very volatile and legally complex involving multiple nations and different legal systems – “Non Traditional”
Budapest Convention – Global Influence...

130+

Ratified/acceded: 52
Signed: 6
Invited to accede: 12
= 70

Other States with laws/draft laws largely in line with Budapest Convention = 20
States drawing on Budapest Convention for legislation = 45+

Source – Council of Europe
ww.coe.int/cybercrime
Sri Lanka ----
Road to Budapest Convention

- Sri Lanka Invited to accede to Budapest Cybercrime Convention - 23rd February 2015
- Acceded to the Cybercrime Convention (29th May 2015)
- Applicable on Sri Lanka – w.e.f - 1st September 2015
- 1st Country in South Asia & 2nd in Asia after Japan
- Ahead of Malaysia etc, & Fastest ever Accession in Council of Europe history
- Preparations towards Accession carried out over several years under “e-Sri Lanka Development Initiative”, eg:-
  - Regulatory reform through “International Legislative Standards”
  - Capacity building measures – Law Enforcement & Judicial Training
Institutional & Capacity Building Measures

  - National CERT established under e-Sri Lanka Development Initiative
  - Launched Sector specific CSIRTS (eg:- Bank CSIRT with Central Bank & Banking Sector) - **FinCERT**
  - A Public private partnerships model to protect critical information infrastructure

- “Digital Forensic Lab” for Cyber Crimes Unit of Police (CID)

- Capacity Building Measures
  - For Police, Judicial and Prosecution authorities under e-Sri Lanka Initiative
  - Public Awareness Programs & Cyber Security Week (CSW)
  - GLACY Project of EU/ Council of Europe
Consumer Affairs Authority Act
Protecton for Consumers in Digital Age

- Salient Features of the Consumer Affairs Act No. 9 of 2003
  - Promote effective competition and protection for Consumers
  - Determine Standards and Specifications relating to Goods and Supply of “Services”
    - Section 12
  - Inquire into Complaints arising from production of goods and Supply of Services -
    Section 13 (Including quality, standards & warranty)
  - Warranties for Goods and Services – Section 32

- Definition of “Services”
  - Includes the “Provision of Information Technology and Communications”

- Consumer Affairs Authority Act – Adequate to Protect Consumer in Digital Age?

Data Protection in Sri Lanka

- Data Protection measures embodied in Several Legislation
  - Banking Act of 1988
  - Intellectual Property Act 2003
  - Computer Crimes Act of 2007 (Section 10)
  - Registration of Persons (Amendment) Act No. 8 of 2016
- E-Government Policy (Section 0103) -- (Pg 46)
  - Processing/Retention/release of personal data and information in accordance with applicable laws and regulations
  - Email addresses of citizens collected through govt websites should not be divulged
- Right to Information Act No. 12 of 2016
- Need for a Comprehensive Data Protection Regime
  - Recent decision of the Inter-Ministerial Committee on ICT
- Institutional Framework – “Information Commission”??
Conclusions

• Sri Lanka has an effective enabling Legal environment to facilitate Digital Commerce
  – Electronic Transactions Act
  – Payment & Settlement Systems Act
  – Ratification of UN ECC (1st February 2016)
  – Budapest Cybercrime Convention (1st September 2015)

• Benefit the Consumer in the Digital Age

• Need to Enhance Consumer Protection
  – Data Protection Legislation – Consumer Privacy

• Need for Continuous Review and Reform of Law & Policies
Thank You!

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