

# **DRAFT BILL FOR STAKEHOLDER DISCUSSION**

Ministry of Tourism, Industry and Commerce



**“National Electronic Commerce Bill”**

April 2005

Version 1.0

# 1. Background

The National Development Strategy (NDS) describes IT as ‘arguably one of the most important determinants of competitiveness and social and economic growth’, and anticipates that the application of IT will assist in finding new markets for Guyanese exports, enable new products to be produced, spread information, reduce transaction costs, facilitate communication with trading partners, and link small-scale producers in the interior into the wider economy. As such the strategy recommends efforts to establish new kinds of internet-enabled businesses such as data warehousing, data entry and processing, translation, and software development, and the use of IT to assist in the reform of the public service (e-government).

An important component of this strategy is the development of E-Commerce. E-Commerce has been defined in a number of ways, but is perhaps most simply defined as ‘doing business electronically,’ typically over the internet. The digitization of the world economy is a global economic trend that affects what firms do, how they do it, and how they interact with each other and their customers. This trend has been led by the developed countries, but is and will increasingly affect developing countries also, leaving them with the simple choice of adapting to the opportunities and threats that it poses now, or later.

E-Commerce offers a number of opportunities for firms. The increased capability to store, process, and communicate information means that new whole new business models such as remote call centers or back office processing become viable, whilst existing models can be improved through increased capabilities and reduced costs. New business opportunities are created not only in hi-tech areas, but also through the increased reach of more traditional businesses. The Rupununi Weavers are an example of how this can be done, using the internet to sell existing products (hammocks) to the global market. This increased reach dramatically expands the size of the available market, which in turn increases the scope for specialization in niche markets, and thus for diversification of the economy. Consumers can also benefit, as access to the internet gives them a much wider choice of products and suppliers from which to choose, and more information about the goods and services on offer.

In many ways Guyana is particularly well-suited to benefit from the use of e-commerce. It is almost unique in that it is an English speaking, low wage country in the same time zone as the Eastern United States, with a relatively well-educated population, making it an ideal site for a real-time back-office processing industry serving the US market. Guyana is a trading country (in 2001 exports amounted to 86% of GDP), making the ability to cut the costs of international business particularly important. Our economy is heavily focused on a small number of industries, making the opportunities for diversification mentioned above especially valuable. Initiatives to boost Guyana as a nature-based tourism destination could benefit greatly from the capacity for cost-effective advertising with a global reach that the internet offers. Finally, e-commerce offers considerable opportunities for further integrating the coastal economic area of Guyana

with the hinterland, as linkages and communication become easier, cheaper, and more extensive.

*How then can these potential benefits be achieved?* The lead in this area must be taken by the private sector; the history of the internet and e-commerce is a history of unpredictable innovations led by private enterprise, and of bottom-up governance. However, the Government recognizes that the development of electronic commerce in Guyana faces a number of issues and barriers and is determined to do what it can to help overcome these inhibiting factors.

## **2. E-Commerce Legislation: Purpose and Origins**

One of the key barriers to the development of e-commerce identified by the Government is the perception, both domestically and internationally, that Guyana (along with many other CARICOM countries) has not yet passed the necessary legislation to ensure the legal basis for internet-based transactions and agreements. From consultations conducted over the last few years it has become clear that there is concern in the business community that contracts entered into over the internet may not be legally binding, and this is contributing to a reluctance to rely on the internet for more than just simple advertising. Moreover, developed and developing countries around the world are adopting such laws, and Guyana must follow suit or risk being seen as a late-starter with an inadequate legal framework in this regard; this would be a very strong deterrent to foreign IT firms investing in Guyana.

The main purpose of the attached draft “Electronic Commerce Act” is therefore to provide the legal framework for electronic transactions. This framework seeks to provide the legal principles to regulate the use of electronic documents and electronic signatures on a technology-neutral basis that is sufficiently flexible to embrace new technological developments and that contemplates a high degree of self-regulation.

The Act sets out a series of functional equivalency provisions which enforce the basic principle that due legal recognition will be accorded to an electronic message, signature, writing and contract on the same basis as such features would be recognised in a paper based environment and that there would be no discrimination against a transaction solely because it was conducted via an electronic medium. It also allows parties to use electronic devices to form, negotiate and conclude contracts and other legally binding agreements. Exemptions include disposition of property, testamentary dispositions, negotiable instruments, enduring powers of attorney and court documents.

The Act is technology neutral, recognising that technologies will continue to evolve over time; it therefore does not prescribe the type or method to be used to generate an electronic contract, signature or method of authenticating the communication so long as the necessary attributes are met by electronic means.

Additionally the Act sets out the duties and the extent of liability of e-commerce service providers and similar intermediaries such as webhosts and Internet Service Providers

(ISPs) and provides for the establishment of an Advisory Board to advise Government on the execution of E-commerce policy. The Government is also empowered under the policy to make regulations with respect to the protection of personal data.

The draft legislation was compiled by staff of the Ministry of Tourism, Industry and Commerce and draws upon a variety of sources including similar pieces of legislation enacted in four other Caribbean countries (Barbados Electronic Transactions Act 2000, Bermuda Electronic Transactions Act 1999, Bahamas Electronic Communications and Transactions Act 2003, Cayman Islands Electronic Transactions Law 2000). These are all partially based on the UNCITRAL model law on Electronic Commerce 1996. The Bill also draws on the UNCITRAL model law on Electronic Signatures 2001 which builds on the law on Electronic Commerce to provide more up-to-date and concrete guidelines regarding electronic signatures.

### **3. Summary of Main Provisions**

The following section provides a bullet point summary of the main provisions of the draft Bill. A more detailed point by point explanatory memorandum follows in Section 4.

#### **Legal requirements respecting electronic communications**

- Electronic records are expressly given legal recognition
- Where a document has to be in writing for legal purposes, a document in electronic form will meet that requirement. However, wills, trusts, dispositions of property, enduring powers of attorney and court documents are expressly excluded.
- Subject to conditions, delivery of legal documents may be made electronically.
- An electronic version of an original document may be used as evidence (including in court) of the original provided that the electronic version is an accurate representation of the original.
- Subject to conditions, legal documents may be retained and made available for inspection in electronic form.
- Subject to a limited number of mandatory provisions, those undertaking e-business are free to contract out of the Law – the Law is intended to provide a framework and certainty but not to fetter the ways in which parties which to carry out legitimate e-business.

#### **Formation and validity of contracts**

- Contracts may be made electronically e.g. by exchange of emails.
- Specific rules are made with regard to attributing an electronic record to the originator – considerable care will be needed by originators to ensure that they do not become legally bound inadvertently.
- Specific rules dealing with validity of acknowledgements of electronic messages, the time at which an electronic message is sent and received and the place at

which an electronic message is sent and received – the latter is potentially very important with regard to jurisdictional issues surrounding governing law and the correct forum for enforcement of a contract.

### **E-Commerce Service Providers and Intermediaries**

- Specific defences (in the case of a criminal prosecution) or limitations of liability (in the case of a civil suit) for e-commerce service providers and intermediaries.
- Provisions to establish a code of conduct in relation to e-commerce service providers and intermediaries.

### **E-Commerce Advisory Board**

- Provision for the appointment of an E-Commerce Advisory Board.

### **Digital Signatures**

- Digital signatures on a document have the same legal validity as a conventional signatures.
- Specific rules as to what will constitute a reliable digital signature and provision for further regulation on this issue.
- Provision for specific recognition of digital signatures given by foreign certification service providers.
- Documents may be notarised and signed electronically.

### **Data Protection**

- No specific rules with regard to data protection but provision made for regulations to be made in this area.

### **Miscellaneous**

- Provision for regulation of the country code top level .gy domain name
- General power to make further regulations under the Law.

## **4. E-Commerce Act: Detailed Explanatory Memorandum**

The following explanatory memorandum provides a point-by-point detail on each of the Articles contained in the Bill. It also provides details of the source of each Article to guide actors on where they can gain more information on the correct interpretation of each Article. Web-references are provided at the end of the Section.

### **Part I Preliminary**

#### **Article 1      Short title and commencement**

Article 1 is the standard citation provision.

#### **Article 2      Definitions**

Article 2 sets out the definitions of terms and expressions used in the Bill.

#### **Article 3      Crown to be bound**

Article 3 recites that the Bill applies to the Crown and enables the Minister by notice in the Gazette to indicate when and in relation to what matters a Government Department will receive and process records in electronic form.

#### **Article 4      Exclusions**

Article 4 allows for certain documents to be excluded from the application of the Bill. Under Guyanese law, in some instances, handwritten signatures are more appropriate for certain categories of agreements. The purpose of limiting the application of this Bill is to acknowledge the intent of the relevant laws that mandate the use of handwritten signatures for some documents including wills, trusts, conveyances of real property, enduring powers of attorney and court documents.

#### **Article 5      Autonomy of parties**

Article 5 is based on law enacted in the Bahamas and provides that the Bill does not oblige parties to use electronic communications and grants parties who do decide to use electronic communications liberty to vary the provisions of Parts II, III, and VII (excluding Article 24) of the Bill by agreement.

#### **Article 6      Consumer consent to electronic communications**

Article 6 is based on legislation in the Bahamas and mandates that consumer consent will be required for electronic records to be used where a legal requirement currently exists for consumers to be provided with a written record of certain information. Consumers will also have to have been provided with enough information about the proposed

electronic system with specifications for access and retention of such records to be supplied by the provider to enable them to make an informed decision as to whether or not they wish to give their consent. This provision is intended to protect consumers, so that their legal right to be given certain forms of information is not compromised by being provided with that information in a form that they cannot access or do not understand.

## **Part II**

### **Legal requirements respecting electronic communications**

#### **Article 7      Legal recognition of electronic communications**

Article 7 is based on Article 5 of the UNCITRAL Model Law on Electronic Commerce 1996 (henceforth, Model Law) and is common to all the above mentioned Caribbean laws. It sets out the fundamental principle that an electronic record is not subject to legal challenge merely because it is in electronic form.

#### **Article 8      Writing**

Article 8 is based on Article 6 of the Model Law and provides that a legal requirement for writing is satisfied by an electronic record if the record is accessible and capable of retention for subsequent reference. The electronic record satisfies the traditional purpose of writing in a paper-based environment which, among other things 1) ensures that there would be tangible evidence of the existence and nature of the intent of the parties to bind themselves 2) provides a permanent, unaltered record of a transaction 3) permits the storage of information in tangible form; and (4) brings into existence legal rights and obligations in those cases where a “writing” was required for validity purposes.

#### **Article 9      Delivery**

Article 9 is based on law in the four Caribbean countries mentioned above. It provides that if information is required by law to be delivered or sent to a person it may be delivered or sent by electronic means.

#### **Article 10     Original form**

Article 10 is based on Article 8 of the Model Law and sets out the minimum requirements for an electronic record to be regarded as the functional equivalent of an original. It provides that a document in electronic form (signed or unsigned) will constitute an original provided a reliable assurance exists as to the integrity of the information.

#### **Article 11     Retention of electronic communications**

Article 11 is based on Article 10 of the Model Law and sets out the requirements for the storage of documents, information or records in electronic form. It applies to records which originally existed in electronic form as well as to the retention of paper form or

other tangible medium. The standards set out in this Article are minimum standards and does not preclude a public body from establishing additional requirements for the retention of records required under its own regulations.

#### **Article 12 Admissibility and evidential weight of electronic communications**

Article 12 is based on Article 9 of the Model Law and establishes the principle that electronic records and electronic signatures should be admissible as evidence in legal proceedings. It mirrors the fundamental principle expressed earlier that electronic communications should not be discriminated against, if it is the best evidence, solely on the nature of the medium chosen.

### **Part III Formation and validity of contracts**

#### **Article 13 Formation and validity of contracts**

Article 13 is based on Article 11 of the Model Law and provides that in the context of contract formation the fact that the transaction is conducted in electronic form does not affect its validity.

#### **Article 14 Attribution of electronic communications**

Article 14 is based on Article 13 of the Model Law and provides that an electronic record is attributed to a particular person if it resulted from an action of that person or through an agent or electronic agent of that person.

#### **Article 15 Acknowledgement of receipt of electronic communications**

Article 15 is based on Article 14 of the Model Law and deals with acknowledgement of receipt of electronic records and sets out rules to be applied in situations where the parties have agreed a form of acknowledgement, and where they have not.

#### **Article 16 Time and Place of Dispatch and Receipt of Electronic Records Delivery**

Article 16 is based on Article 15 of the Model Law and provides that if information is required by law to be delivered or sent to a person it may be delivered or sent by electronic means. This Article sets out rules governing the dispatch and receipt of electronic records and adopts the principle that the place of business of each of the parties is the governing criterion rather than the location of the information processing system.

## **Part IV**

### **Intermediaries and e-commerce service providers**

#### **Article 17      Liability of intermediaries**

Article 17 is common to all four Caribbean countries listed above. It recognises that an intermediary, who merely provides a conduit, should not be liable for the content of electronic records if the intermediary has no actual knowledge or is not aware of facts that would objectively indicate a likelihood of civil or criminal liability in respect of material on the intermediary's network.

#### **Article 18      Procedure for dealing with unlawful, defamatory, etc.**

Article 18 is common to Barbados, the Bahamas, and Bermuda and sets out a procedure that intermediaries must follow if they become aware of facts or circumstances that give rise to civil or criminal liability in respect of information on their networks. The intermediary must remove the offensive material and notify the Minister and the police of the identity of the client. The Minister may issue directions to the intermediary to withdraw service to the client, amongst other things.

#### **Article 19      Codes of conduct and standards for intermediaries and e-commerce service providers**

Article 19 is common to the Bahamas and Bermuda and establishes a mechanism for the creation of codes of conduct or standards to be applied to intermediaries and e-commerce service providers. The intention is that a code of conduct will be developed by the industry, but if it fails to do so, the Minister may intervene and establish a standard.

## **Part V**

### **E-commerce Advisory Board**

#### **Article 20      E-commerce Advisory Board**

Article 20 provides for the establishment of the E-Commerce Advisory Board of 5 to 9 members to guide the Minister on the exercise of the Minister's functions under the Bill and the development of the industry.

## **Part VI**

### **Data Protection (regulations)**

Article 21 is based on similar law from the Cayman islands and Bermuda. Whilst no specific rules with regard to data protection are made provision is made for regulations. The data protection regulations that the Minister is empowered to make under this Article are voluntary and data processors have to comply with them only if they voluntarily choose to register and subscribe to those standards.

## **Part VII**

### **Electronic signatures**

Almost all of this section is based on the UNCITRAL model law on Electronic Signatures 2001. Many of the laws in the other Caribbean countries were drafted before the release of this document and hence only incorporate parts of the document.

#### **Article 22 Equal treatment of signatures**

Article 22 is based on Article 3 of the Model Law on Electronic Signatures 2001 and provides that, where a signature is required by law, an electronic record meets that requirement. As a result, there should be no disparity of treatment between electronically signed messages and paper documents bearing handwritten signatures or between various types of electronically signed messages, provided that they meet the basic requirements set forth in Article 23, paragraph 1, of the Bill or any other requirement set forth in applicable law.

#### **Article 23 Compliance with a requirement for a signature**

Article 23 is one of the core provisions of the Bill as is based on Article 6 of the UNCITRAL Model Law on Electronic Signatures. It provides guidance as to how to test of reliability of an electronic signature. In interpreting article 23, it should be borne in mind that the purpose of the provision is to ensure that, where any legal consequence would have flowed from the use of a handwritten signature, the same consequence should flow from the use of a reliable electronic signature.

#### **Article 24 Determination of standards (regulations)**

Article 24 is based upon Article 7 of the UNCITRAL Model Law on Electronic Signatures. It provides that the Minister can make regulations to determine as to what specific technologies may satisfy the reliability criteria of Article 23, provided that such determination is made in accordance with international standards.

#### **Article 25 Conduct of the signatory**

Article 25 is based on Article 8 of the UNCITRAL Model Law on Electronic Signatures. This embodies a minimal “code of conduct” for the signatory. For example, the article states that the signatory should exercise reasonable care to prevent unauthorised use of signature creation data which constitutes a basic obligation that is, for example, generally contained in agreements concerning the use of credit cards.

#### **Article 26 Conduct of the certification service provider**

Article 26 is based on Article 9 of the UNCITRAL Model Law on Electronic Signatures and expresses the basic rule that a certification service provider should adhere to the

representations and commitments made by that supplier, for example in a certification practices statement or in any other type of policy statement.

### **Article 27 Criteria for determining trustworthiness**

Article 27 is based on Article 10 of the UNCITRAL Model Law on Electronic Signatures. This Article is mainly intended to assist with the interpretation of the notion of “trustworthy systems, procedures and human resources” in Article 26, paragraph 1 (f). As in the Cayman islands law, the Minister may make regulations prescribing the factors to be taken into account in determining trustworthiness. A list is given as guidance to provide a flexible notion of trustworthiness, which could vary in content depending upon what is expected of the certificate in the context in which it is created.

### **Article 28 Conduct of a person relying on an electronic signature**

Article 28 is based on Article 11 of the UNCITRAL Model Law on Electronic Signatures and reflects the idea that a party that intends to rely on an electronic signature should bear in mind the question whether and to what extent such reliance is reasonable in the light of the circumstances. It is not intended to deal with the issue of the validity of an electronic signature, which is addressed under Article 23 and should not depend upon the conduct of the relying party.

### **Article 29 Recognition of foreign certificates and electronic signatures**

This Article stems from Article 12 of the UNCITRAL Model Law on Electronic Signatures and is intended to reflect the basic principle that the place of origin, in and of itself, should in no way be a factor determining whether and to what extent foreign certificates or electronic signatures should be recognised as capable of being legally effective. Determination of whether, or the extent to which, a certificate or an electronic signature is capable of being legally effective should not depend on the place where the certificate or the electronic signature was issued but on its technical reliability.

Through a reference to the central notion of a “substantially equivalent level of reliability”, paragraph 2 of the Article acknowledges that there might be significant variance between the requirements of individual jurisdictions. The requirement of equivalence, as used in paragraph 2, does not mean that the level of reliability of a foreign certificate should be exactly identical with that of a domestic certificate as designated, for example, by regulations provided for under Article 24. Instead reference should be made to recognised international standards and other relevant factors (such as those listed under Article 23).

### **Article 30 Provision of certification services**

This Article is taken from the Cayman Islands and merely defines more clearly what constitutes provision of certification services in Guyana and what Part VII of the Bill is exactly referring to.

### **Article 31 Pseudonyms**

This Article is based on law in the Cayman Islands and Bermuda. It allows individuals to use pseudonyms in electronic signatures, as long as the certification service provider (which provides and administers the electronic signatures) is provided with the individual's real details, and those details shall be made available to the police in appropriate circumstances.

### **Article 32 Notarisation and acknowledgement**

Article 32 is taken from the Cayman Islands and provides that documents may be notarised and signed electronically.

## **Part VIII General**

### **Article 33 General provisions as to prosecutions under the Act**

This Article is common to all the Caribbean laws and provides for conduct of proceedings for offences under the Act, in respect of body corporates and their officers. This section also sets maximum penalties to be applied under the Act where no other is specified.

### **Article 34 Regulations**

This Article empowers the Minister to make regulations specifically and generally. A key regulation concerns the registration and use of the .gy domain name to prevent any illegal activity from occurring under a Guyanese domain name. A penalty section applies to these regulations so as to enforce any provision that specifies a code of conduct that may be contravened by a person.

## **References to Source Legislation**

UNCITRAL model law on Electronic Commerce 1996:

<http://www.uncitral.org/english/texts/electcom/ecommerceindex.htm>

UNCITRAL model law on Electronic Signatures 2001:

<http://www.uncitral.org/english/texts/electcom/ecommerceindex.htm>

Barbados Electronic Transactions Act 2000:

<http://www.commerce.gov.bb/Legislation/default.asp>

Bahamas Electronic Communications and Transactions Act 2003:

[unpan1.un.org/intradoc/groups/public/documents/CARICAD/UNPAN008407.pdf](http://unpan1.un.org/intradoc/groups/public/documents/CARICAD/UNPAN008407.pdf)

Bermuda Electronic Transactions Act 1999:

[www.bakernet.com/ecommerce/bermuda-eta.doc](http://www.bakernet.com/ecommerce/bermuda-eta.doc)

Cayman Islands Electronic Transactions Law 2000:

[www.icta.ky/docs/Laws/CI\\_Electronic\\_Trans\\_Law.pdf](http://www.icta.ky/docs/Laws/CI_Electronic_Trans_Law.pdf)

## 5. Key Issues to be Resolved

The following section highlights the key issues that need to be resolved through stakeholder consultation. It must be noted that Parts II and III of the Bill are taken directly from the UNCITRAL model law on Electronic Commerce 1996 and are common to all other legislation in the Caribbean. These sections therefore hold no real point's contention. Part IV and V are also relatively safe, being common to most of the legislation that exists in the four Caribbean countries mentioned above. However, **the remaining parts of the Bill all require critical input from stakeholders to ensure that the provisions included in the final draft are appropriate to the specific local conditions of Guyana.** These Parts are dealt with in turn.

### Part VI: Data Protection

This section is taken from similar sections in the Cayman islands and Bermuda. A more open ended section is included for Barbados. The section is absent in the Bahamas.

#### **Voluntary data protection provisions (Article 21)**

The data protection regulations that the Minister is empowered to make under this section are only voluntary. As such, data processors will only have to comply with them if they voluntarily choose to register and subscribe to those standards.

***Key issue(s) to be resolved:*** Should data protection provisions be compulsory, as they are in some Western countries, or will this place an unreasonable burden on small firms?

### Part VII: Electronic Signatures

Most of this section is based on the UNCITRAL model law on Electronic Signatures 2001. Many of the laws in the other Caribbean countries were drafted before the release of this document and hence only incorporate parts of the document. This draft Bill is therefore more up-to-date with current international practice than the law in many of the other Caribbean countries. However, there are several serious points of contention.

#### **Regime established for approval and registration of certification service providers**

At the moment there is no provision in the Bill for a procedure for approving and registering certification service providers to ensure legal effect of electronic signatures. Currently the Bill is based on the model law, purposefully to keep the Bill as simple as possible. In its current form providers simply have to ensure that they meet the objective criteria listed under Article 23 for signatures to have legal effect (unless regulations indicating which techniques are deemed to satisfy that criteria are drafted by the Minister in which case signatures must satisfy these conditions of legal effect).

**Key issue(s) to be resolved:** Do we need such a procedure or is the Bill sufficient in its current form? Will we need such a procedure, if not now, then in the future? Three options present themselves:

Option	Key Features	Key Points
1. Bill in current form based on 2001 Model Law and Bahamas solution	<ul style="list-style-type: none"> <li>• No provision for approving and registering certification providers.</li> <li>• For signature to be legally binding have to simply satisfy Articles 23 or 24 which have clear interpretations in court of law.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires no resources</li> <li>• Ensures bureaucratic procedures do not inhibit use of electronic signatures.</li> <li>• Can create regulations in future to provide for a suitable approval process under Article 34 (c)</li> </ul>
2. Cayman Island solution	<ul style="list-style-type: none"> <li>• Adds in provisions allowing Minister to establish voluntary register of approved certification service providers on payment of a fee.</li> <li>• Allow public inspection of an electronic copy of the register.</li> <li>• Procedure for regulations to grant of approvals and revocation.</li> <li>• Signatures satisfying Articles 23 or 24 still have legal effect regardless of approval.</li> <li>• <b>Impacts on foreign recognition of signatures</b></li> </ul>	<ul style="list-style-type: none"> <li>• Does not need to be enacted now but is an option for the future</li> <li>• Provides for greater protection of consumers?</li> <li>• Resource and human capacity constraints in setting up efficient approval and revocation process</li> </ul>
3. Bermuda and Barbados solution	<ul style="list-style-type: none"> <li>• Mandatory registration and approval of providers for signatures to have legal effect</li> </ul>	<ul style="list-style-type: none"> <li>• Resource and human capacity constraints in setting up efficient approval and revocation process</li> <li>• Potential for bureaucratic procedures to inhibit use of legally binding electronic signatures</li> <li>• Potential to place undue burden on small firms</li> </ul>

## **Recognition of foreign certificates and electronic signatures (Article 29)**

This Article is based on Article 12 of the UNCITRAL Model Law on Electronic Signatures and is intended to reflect the basic principle that the place of origin, in and of itself, should in no way be a factor determining whether and to what extent foreign certificates or electronic signatures should be recognised as capable of being legally effective.

Reference is made to the central notion of a “substantially equivalent level of reliability.” The Bill currently acknowledges that there might be significant variance between the requirements of individual jurisdictions and therefore does not require that the level of reliability of a foreign signature be exactly identical with that of a domestic signature as designated, for example, by regulations provided for under Article 24. Instead reference should be made to recognised international standards and other relevant factors (such as those listed under Article 23).

***Key issue(s) to be resolved:*** Is this adequate or should the Minister be given powers to determine whether or not foreign certificates or signatures meet the reliability required for them to be legally binding (for example, via those certificates meeting the standards required under the voluntary register option enacted by the Cayman islands)?

## **Determination of standards for signatures (Article 24)**

Under this Article the Minister can make regulations to determine as to what specific technologies may satisfy the reliability criteria of Article 23 provided that such determination is made in accordance with international standards.

***Key issue(s) to be resolved:*** Should the specific technologies deemed to satisfy the criteria have to be in accordance with international standards or will this place an undue burden on firms? Bear in mind that when regulations are written, the UNCITRAL guidelines make it clear that “international standards” should not be limited to standards developed, for example, by the International Organization for Standardization (ISO) and the Internet Engineering Task Force (IETF), or to other technical standards; the word “standards” should be interpreted in a broad sense, which would include industry practices and trade usages, “voluntary standards”, texts emanating from such international organizations as the International Chamber of Commerce, the regional accreditation bodies operating under the aegis of ISO, the World Wide Web Consortium etc...

## **Pseudonyms (Article 31)**

This Article from the Cayman islands and Bermuda allows individuals to use pseudonyms in electronic signatures, as long as the certification service provider (which provides and administers the electronic signatures) is provided with the individual’s real details, and those details shall be made available to the police in appropriate circumstances.

***Key issue(s) to be resolved:*** Is it the right of individuals to choose the name by which they wish to call themselves, or does this make it too easy to commit cyber-crime?

### **Contents of a certificate**

The Bill in its current form does not include provisions for the Minister to make regulations governing the parameters that shall be specified in a certificate.

***Key issue(s) to be resolved:*** Will this be needed now or in the future? Only the Cayman islands Bill currently contains this provision.

## **Part V: E-commerce Advisory Board**

### **Article 20 E-commerce Advisory Board**

Article 20 provides for the establishment of the E-Commerce Advisory Board of 5 to 9 members to guide the Minister on the exercise of the Minister's functions under the Bill and the development of the industry.

***Key issue(s) to be resolved:*** Do we want an E-commerce Advisory Board? There are clear advantages to this in terms of provision of expert advice to the Government, but there are administrative costs.

### **Other issues**

#### **Encryption**

The Bill in its current form does not include provisions for the Minister to make regulations governing the use, import, and export of encryption products. Barbados, the Bahamas, and Bermuda currently contain such a provision.

***Key issue(s) to be resolved:*** Will this be needed now or in the future? Should the government be regulating the encryption of data at all? There are possible law and order benefits from regulation, but they need to be balanced against rights to privacy and freedom of speech, the practical enforceability of the measure, and concerns that limiting encryption will limit the levels of security available to firms and consumers.

#### **Fines and other penalties**

*Codes of conduct and standards for intermediaries and e-commerce service providers (Article 19)*

Article 19 is common to the Bahamas and Bermuda and establishes a mechanism for the creation of codes of conduct or standards to be applied to intermediaries and e-commerce service providers. The intention is that a code of conduct will be developed by the

industry, but if it fails to do so, the Minister may intervene and establish a standard. If intermediary or e-commerce service provider does not meet the code of conduct then the Minister will submit a warning for them to correct their practices. If after a period of time, as specified by the Minister, the intermediary or e-commerce service provider does not correct their practices they will be subject to a maximum fine.

***Key issue(s) to be resolved:*** What are appropriate fines for this offence? Do we want to set maximum fines in the Act, or do we want to specify them in regulations (easier to change) instead?

#### *Data Protection (Article 21 (3))*

As above, data protection regulations that the Minister is empowered to make under this Article are voluntary and data processors have to comply with them only if they voluntarily choose to register and subscribe to those standards. However, if they do voluntarily choose to register, they are liable to fines if they do not fulfill their obligations.

***Key issue(s) to be resolved:*** What are appropriate fines for this offence? Does it make sense to have fines when standards are voluntary? Will anyone sign up to the standards if they know they will be liable to fines if they breach them?

#### *General provisions as to prosecutions under the Act (Article 33)*

This Article is common to all the Caribbean laws and provides for conduct of proceedings for offences under the Act, in respect of body corporates and their officers. This section sets maximum penalties to be applied under the Act where no other is specified.

***Key issue(s) to be resolved:*** What are appropriate fines for offences committed under the Act? Is imprisonment too harsh?

#### **Name of Act**

***Key issue(s) to be resolved:*** What should the Act be called? In all other Caribbean countries it is called the Electronic Transactions Act (or a variety thereof). Should the Act therefore be called the Electronic Transactions Act for sake of harmonisation with the Caribbean or should be stick with its current title (E-Commerce Bill)?

#### **Exclusions (Article 4)**

This article explicitly excludes wills, trusts, conveyances of real property, enduring powers of attorney and court documents from the application of the Bill.

***Key issue(s) to be resolved:*** Do we want to prevent electronic documents from being used in these situations? Is the list too long? Could a requirement for enhanced security be used instead?

### **Consumer consent to electronic communications (Article 6)**

Taken from the Bahamas, this provision states that consumer consent will be required for electronic records to be used where a legal requirement currently exists for consumers to be provided with a written record of certain information. Also, consumers will have to have been provided with enough information about the proposed electronic system to enable them to make an informed decision as to whether or not they wish to give their consent.

***Key issue(s) to be resolved:*** As above, this provision is intended to protect consumers, so that their legal right to be given certain forms of information is not compromised by being provided with that information in a form that they cannot access or do not understand. On the other hand, the conditions are quite onerous, and could inhibit the spread of the use of electronic communication for legally required information, such as in e-government. We welcome views on whether the text strikes the appropriate balance between these two concerns.

### **Use of .gy. domain name (Article 34)**

As above, a key regulation concerns the registration and use of the .gy domain name to prevent any illegal activity from occurring under a Guyanese domain name.

***Key issue(s) to be resolved:*** Do we want to include the regulation of the country code top level domain name (.gy) in this legislation?

### **Guyanese Equivalents**

***What are the Guyanese equivalents of the following:***

- Crown to be bound (Article 2)
- Registration of Records Act (Article 4e)
- Evidence Act (Article 12 (3))

Comments on these areas of particular contention or any other aspect of the working draft of the E-Commerce Bill should be sent to [nickgodfreycommerce@yahoo.com](mailto:nickgodfreycommerce@yahoo.com), or contact Nick Godfrey on 225 2280 (phone) or 225 4310 (fax).