

ADVICE NOTE
**THE SINT MAARTEN DIGITAL
TRANSFORMATION PROJECT**

ELECTRONIC TRANSACTIONS LEGISLATION

Submitted to:

Ms. Mirjam Deekman

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I. Executive Summary

This advice note brief examines the legal and regulatory framework for electronic transactions in St Maarten.

It discusses the following:

1. Legal and regulatory landscape for Electronic Transactions in St Maarten
2. Gaps Identified
3. Recommendations for updating the legislation.

The St Maarten Electronic Transactions Act (ETA) was enacted to create a predictable legal environment for e-commerce and e-government. It clearly defines the rights and obligations of the transacting parties. It also addresses legal aspects of electronic contracts, use of e-signatures, use of specified security procedures (including digital signatures), and concerns for authentication and non-repudiation.

The ETA was specifically designed to address the use of electronic transactions in the public sector. It allows public bodies to accept electronic filings, electronic versions of documents, and electronic signatures without having to amend their internal procedures.

As an omnibus law, St Maarten's ETA applies to and amends all of the acts that regulate e-business. Several countries supplement their ETAs with internal policies, manuals, and documents.

This review recognizes global developments and focuses on revising the ETA's current framework in an effort to modernize and strengthen the country's ability to conduct business. These efforts allow the government to leverage Information and Communication Technology (ICT) and technological developments to enhance the effectiveness and efficiency of e-commerce and e-government services.

1. Introduction

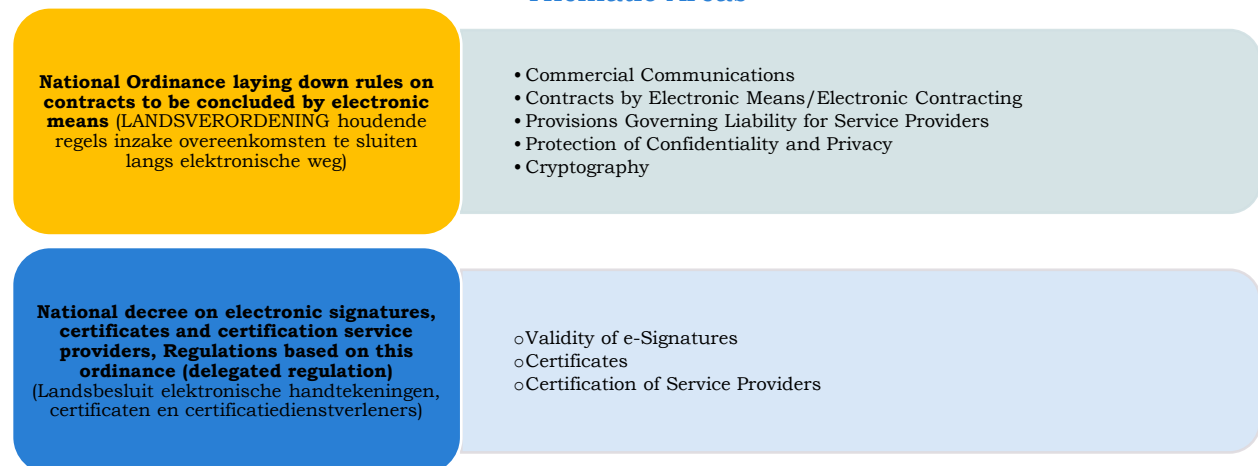
The Sint Maarten revised Digital Transformation Strategy underscores the importance of “developing a modern legal and institutional framework to support and safeguard digital innovation.” It further determines that, in order to achieve this objective, the requisite legal and regulatory framework must feature modernity and must be contemporary in nature in an effort to facilitate innovation.

The findings presented in this Advice Note are based on a gap analysis of the current framework governing electronic transactions and on a benchmarking assessment of international best practices. The Note focuses primarily on the areas of electronic transactions, electronic signatures.

1.1 OVERVIEW OF THE LEGAL AND REGULATORY LANDSCAPE GOVERNING ELECTRONIC TRANSACTIONS IN SINT MAARTEN

The legal and regulatory framework in Sint Maarten features several laws which govern and regulate a wide range of sectors, industries, and activities. The principal laws governing electronic transactions, and related key thematic areas, are noted in **Figure 1** below.

Figure 1: Legal Landscape Governing Electronic Transactions and Related Key Thematic Areas

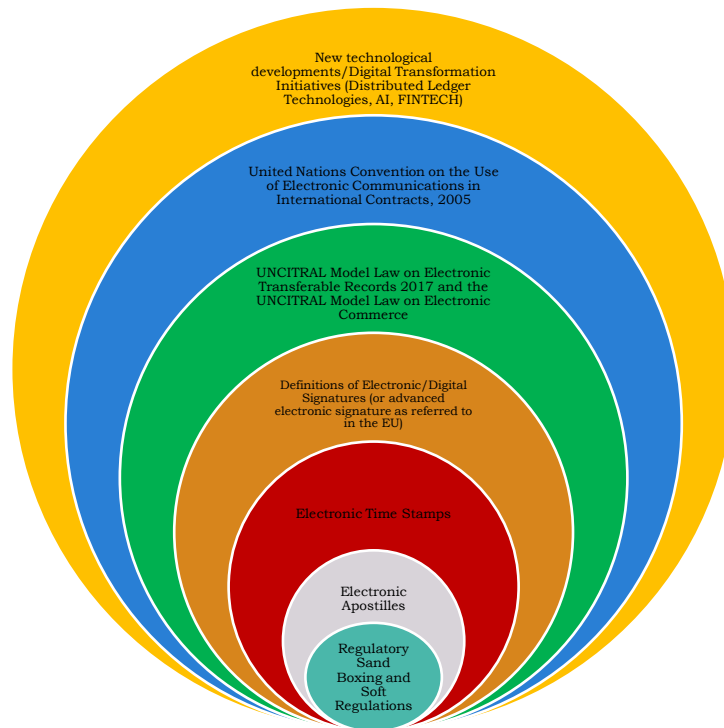


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¹ The notes to this law state that, “The original regulation was signed on 29 December 2000, published in P.B. 2000 no. 168, and entered into force on 1 January 2001” with an effective date of October 2010.

While these laws take into account practices and standards applicable at the time of their creation, several international developments took place in the intervening years. These developments are noted in **Figure 2** below.

Figure 2: International developments impacting e-commerce and e-transactions



As noted in Figure 2 above, the introduction of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transferable Records (MLETR), and the Model Law on Electronic Commerce (MLEC) and the UN Convention on Electronic Contracting had significant impact on electronic transactions and electronic signatures.

The UNCITRAL represents the principal legal institution within the United Nations system for the harmonisation and modernisation of international trade law. In implementing its mandate, several committees prepare and draft uniformed legal texts, educate stakeholders on the drafts, and guide their interpretation in a consistent manner. While the focus of UNCITRAL is quite often on strengthening and harmonising existing laws, it has also been increasingly addressing issues and thematic areas which have not yet been given adequate legal review and coverage. One such area is that of e-Commerce.²

Although Sint Maarten has not adopted the UNCITRAL MLEC, it has partially incorporated its provisions.

² Castellani, Luca G. "The United Nations Convention on the Use of Electronic Communications in International Contracts (almost) at ten: practical relevance and lessons learned." *Journal of Law, Society and Development* 3, no. 1 (2016): 132-152.

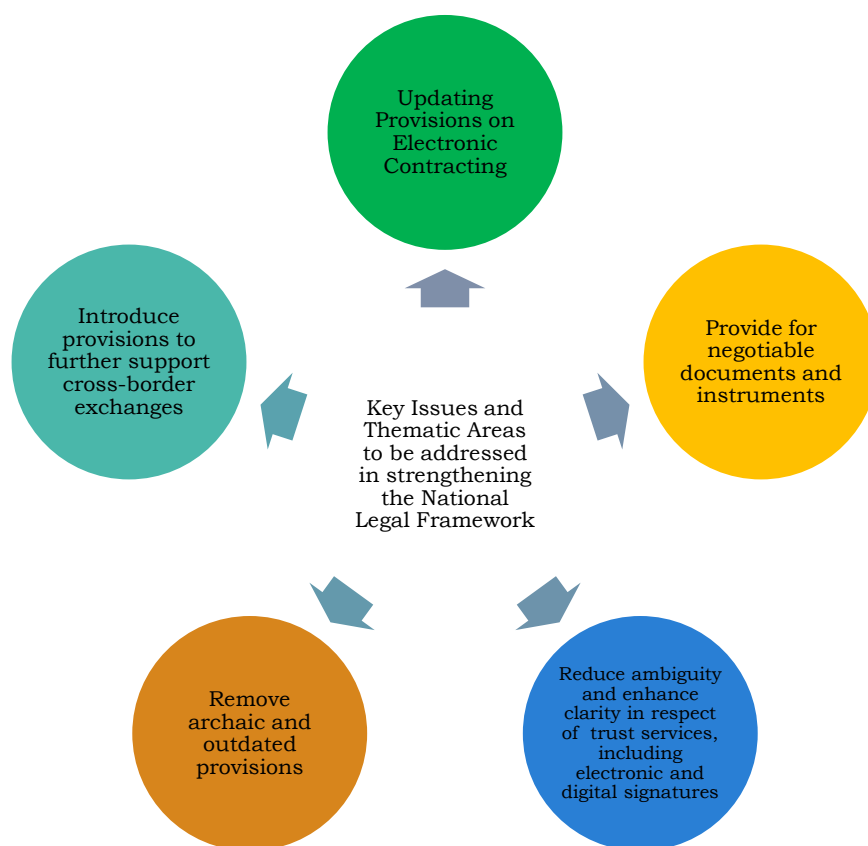
The MLEC was developed to provide an enabling legal framework for commercial activities based on electronic means. It establishes internationally acceptable provisions and requirements intended to eliminate legislative barriers and enhance the integrity, certainty, and legal predictability of e-commerce. The MLEC is specifically designed to surmount legal barriers that may be hindering e-commerce. In addition, the MLEC institutes the equivalence of electronic information to paper-based information.

The key themes modelled on the UNCITRAL texts include provisions in respect of the formation and validity of contracts and the integrity of e-signatures. Sint Maarten's legal framework also covers issues contained in European Union (EU) texts such as the e-Commerce Directive with high-level rules (including Internet Service Provider, or ISP, liability).

The United Nations Electronic Communications Convention represents another key model legislative instrument. It should be noted that the Sint Maarten legal framework does not encompass provisions of the Electronic Communications Convention.

A holistic review of the current legislative framework revealed that the country's landscape is outdated given the dynamism and fluidity of developments in the area of e-commerce. Accordingly, considerable review, revision, and expansion of the legal framework are required in order to identify and address the key issues presented in [Figure 3](#).

[Figure 3: Key Issues and Thematic Areas to be Addressed in strengthening the legal landscape governing electronic transactions](#)



Updating provisions on electronic contracting – Enhancing provisions in respect of the conclusion of contracts via electronic means represents one of the areas in which the legal framework is to be reviewed and strengthened.

Introducing provisions governing negotiable documents and instruments – These provisions will greatly assist in facilitating and regulating commercial transactions featuring promissory notes and other similar instruments.

Reducing ambiguity and enhancing clarity in respect of trust services – The creation of greater certainty associated with trust services is imperative in enhancing the overall electronic transactions framework. As such, this represents another core area that needs to be addressed.

Removing archaic provisions – Provisions which do not reflect the current international status quo, and which may further thwart the advancement of the digital economy, are to be identified and removed.

Supporting cross-border exchanges – Trade facilitation and e-services are two core areas in which electronic transactions and e-signatures are both relevant and important. It is therefore crucial that provisions supporting cross-border exchanges be introduced in a clear and concise manner. E-payments will also be addressed as a result.

These issues are generally covered within the MLEC and MLETR. The tenets contained in the enhanced legislative framework should therefore focus on:

- ❖ Implementing the provisions of the UN Communications Convention
- ❖ Implementing the MLETR, to support and enable digital trade

The first step in enhancing the legal and regulatory framework of Sint Maarten will be aligning it with international best practices. It is also important to determine to which extent the new framework should adopt the standards established by the European Union. A decision on whether current guidelines can be revised, or a new law needs to be developed altogether is ultimately necessary, noting however, the contextual realities of Sint Maarten as a small country with a narrowly diversified economy.

Chapter 2 of this report provides an assessment of international best practices in respect of e-transactions and e-signatures.

2. Gap Analysis: International Benchmarking Assessment

This chapter discusses good practices and standards established globally in respect of e-commerce. The discussion specifically focuses on the standards created by the UNCITRAL and on good practices adopted and implemented by the European Union (EU) and the United States of America (USA). All factors are assessed within the context of electronic transactions.

This chapter further explores Sint Maarten's legislative framework in respect of e-signatures, e-certificates, and e-contracting; these areas are assessed against international best practices as well. The chapter also briefly examines the extent to which the Sint Maarten legal framework provides for e-apostilles.

2.1 ELECTRONIC TRANSACTIONS

2.1.1 UNCITRAL TEXTS

Principal legal texts developed by UNCITRAL for enabling and governing the digital economy include:³

- UNCITRAL Model Law on Electronic Commerce, 1996
 - ⇒ Enacted in over 70 States
- UNCITRAL Model Law on Electronic Signatures, 2001
 - ⇒ Enacted in over 30 States
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
 - ⇒ 18 signatories, 15 States parties
- UNCITRAL Model Law on Electronic Transferable Records, 2017
 - ⇒ Enacted in 7 States⁴

2.1.2 EUROPEAN UNION

Since the mid-1990s, the development of e-commerce laws throughout Europe and the USA, and by extension the world, was largely due to the influence of UNCITRAL texts. The UNCITRAL Model Law on Electronic Commerce (MLEC) addresses issues in respect of the application of legal requirements to data messages, communication of data

³ See all Model Laws at [United Nations Commission on International Trade Law. Electronic Commerce Texts and Status.](#)

⁴ Castellani, Luca G. "The United Nations Convention on the Use of Electronic Communications in International Contracts at ten: practical relevance and lessons learned." *Journal of Law, Society and Development* 3, no. 1 (2016): 132-152.

messages, and the carriage of goods. More specifically, the MLEC prescribes and establishes provisions in respect of the:

- Legal recognition of data messages (Article 5)
- Writing (Article 6)
- Signature (Article 7)
- Original (Article 8)
- Admissibility and evidential weight of data messages (Article 9)
- Retention of data messages (Article 10)
- Formation and validity of contracts (Article 11)
- Recognition by parties of data messages (Article 12)
- Attribution of data messages (Article 13)
- Acknowledgement of receipt (Article 14)
- Time and place of dispatch and receipt of data messages (Article 15)
- Actions related to contracts of carriage of goods (Article 16)
- Transport documents (Article 17)

The legal framework of Sint Maarten contains provisions which govern agreements concluded by electronic means (addressed in Chapter 4 of the National Ordinance laying down rules on contract to be concluded by electronic means), determining that these are valid and legal, similarly to the provisions established under Article 11 of the MLEC.

Chapter 5 of the Sint Maarten ***National Ordinance laying down rules on contracts to be concluded by electronic means*** addresses issues related to e-signatures, similarly to the standards established in Article 7 of the UNCITRAL Model Law. Article 1 of the ***National Decree, laying down general measures, implementing Article 7(3) of the National Ordinance contracts by electronic means for the establishment of requirements for electronic signatures, certification service providers and certificates to be issued by them*** also addresses e-signatures.

Provisions in respect of the formation and validity of contracts from Article 11 of the UNCITRAL MLEC are contained in the ***National Ordinance laying down rules on contracts to be concluded by electronic means*** as well. There is, however, scope to expand these and other provisions and further introduce new rules and requirements in pursuit of greater alignment with the Model Law.

The European Commission has implemented its e-commerce regime through relevant directives, which include the following:

- Regulation (EU) N°910/2014 on electronic identification and trust services for electronic transactions in the internal market (e-IDAS Regulation). The e-IDAS Regulation is a milestone in providing a predictable regulatory environment to enable secure and seamless electronic interactions between businesses, citizens, and public authorities; and
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“e-Commerce Directive”).

- From an e-commerce point of view, the 1997 EU Distance Selling Directive⁵ is of paramount importance as it provides for consumers to be given certain information prior to the conclusion of a distance contract.

The principles enshrined in the UNCITRAL MLEC are included in many articles within the EU's e-Commerce Directive. Electronic contracts are given special attention, as provided for by Article 10 of the Directive, while the formation and validity of contracts are addressed in Article 11 of the MLEC. The EU mandates that all its Member States both ensure that their legal systems conduct the conclusion of contracts electronically and that this process be seamless and without any interference in the use of electronic contracts.

The EU e-Commerce Directive establishes rules in respect of transparency and information requirements for online service providers, commercial communications and electronic contracts, and limitations of liability of intermediary service providers.⁶ The Directive reflects the precepts present in the UNCITRAL Model Law on e-Commerce, recognizing electronic documents as legitimate documents/records. Given its inherent nature, the EU Directive contains principles and provisions specific to the workings of an internal market structure. Such provisions were not contemplated in the UNCITRAL Model Law given its generality.

Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC addresses and legitimises the use of electronic signatures. Section 4 of this Regulation specifically deals with issues surrounding this matter. Article 25 of the Regulation establishes the legal effects of electronic signatures, while Article 41 establishes legal effects for electronic time stamps.⁷

The Regulation gives legal effect to electronic seals further to the provisions of Section 5, while covering legal effects of an electronic document under Chapter IV.

Regulation (EU) N°910/2014 on electronic identification and trust services for electronic transactions in the internal market (e-IDAS Regulation)⁸ covers the standards and guidelines governing electronic transactions. This Regulation sets forth the framework that facilitates and ensures that persons and businesses establish and utilise their own national electronic identification schemes to access public services in other EU Member Countries, where e-IDs are available. It further addresses issues in respect of electronic signatures, electronic seals, time stamps, electronic delivery services, and website authentication.

Regulation (EU) N°910/2014 repealed Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for

⁵ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

⁶ European Commission. [Shaping Europe's Digital Future - e-Commerce Directive](#).

⁷ [Regulation \(EU\) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC](#).

⁸ Ibid.

electronic signatures, establishing more modern and visionary provisions. It further allows for transitional measures in respect of qualified electronic signature creation devices, qualified certificates issued to natural persons under Directive 1999/93/EC, and certification-service-provider issuing qualified certificates under Directive 1999/93/EC. The EU does not have any blanket exceptions to the use of electronic transactions or electronic signatures.

There are lessons to be learnt from the EU’s approach to ensure the infusion of modernity in the legal architecture of Sint Maarten.

2.1.3 UNITED STATES OF AMERICA

While at the federal level the US has the E-SIGN Act,⁹ most States have also adopted the Uniform Electronic Transactions Act (UETA).¹⁰ NY enforces the Electronic Signatures and Records Act (ESRA).¹¹ In the US, an “electronic signature” can a) use an embedded signature token (e.g., DocuSign), b) entail clicking on an “I agree” button on a website or ticking a box that says “I have read and agree to terms and conditions,” c) simply mean returning an email with a name typed on a signature line or leaving a message on an answering machine.¹²

It is important to note that, given the recent pandemic, there have been several governments and private sector entities globally which have introduced similar procedures in respect of the use of “electronic signatures.” The government of Sint Maarten is a prime example of this shift to electronic signatures as a result of the pandemic. Its vaccination department has in fact introduced a similar interface for its online COVID vaccine registration form.¹³ By clicking on a receipt one enters into a clickwrap agreement. The UN Electronic Communications Convention provides for the conclusions of contracts where the proposal is generally accessible to anyone, as opposed to a particular party, such as in online contracts, including “browse wrap” licenses (which are elements of some websites and users of the sites assent to the contract when visiting them) and clickwrap agreements.

Unlike the EU and most other countries, the US does not have a “two-tier” approach to electronic signatures. It is presumed that an electronic signature is valid (just like the presumption that attaches to a written signature on paper). The burden is on the party challenging the legitimacy of the signature to demonstrate that it is invalid (whether it be in electronic or written form).¹⁴

2.1.4 CARIBBEAN

All CARIFORUM countries, except Guyana and Cuba, have enacted Electronic Transactions Acts (ETAs). As omnibus laws, these ETAs apply to and amend ALL the Acts of their respective countries as they relate to conducting business electronically.

⁹ [Electronic Signatures in Global and National Commerce Act](#) (E-SIGN). Public Law 106-229, June 30, 2000.

¹⁰ [Uniform Electronic Transactions Act](#) (1999) (UETA).

¹¹ New York State [Electronic Signatures and Records Act](#) (ESRA).

¹² [See pages 8-9 of UETA under “Electronic Signatures.”](#)

¹³ Government of Sint Maarten. [COVID Vaccine Registration Form](#). 2021.

¹⁴ Jeffrey P. Cunard. Debevoise & Plimpton

Therefore, the overarching framework for doing business electronically exists in all Caribbean countries, except for Guyana and Cuba. Information on the Model Laws and country enactment can be found on the UNCITRAL website.¹⁵

However, some of the ETAs are overly restrictive and contain outdated clauses. The recently enacted Suriname ETA for example only implements one UNCITRAL text (the Model Law on Electronic Commerce, 1996). Curacao also has a National Ordinance Agreements by Electronic Means, 2010, which, similarly to the Sint Maarten Ordinance, is outdated.

2.1.5 ELECTRONIC SIGNATURES

Chapter 5, Article 7, of the ***National Ordinance laying down rules on contracts to be concluded by Electronic means*** covers e-signatures and certificates as follows:

An electronic signature has the same legal force as a handwritten signature and may be admitted as evidence in legal proceedings.

Certificates issued to the public by a certification service provider shall be recognized for evidence purposes, provided that the certification service provider complies with the requirements to be laid down by national decree, laying down general measures, or that the certification service provider guarantees the certificate.

By national decree, laying down general measures, detailed rules may be laid down with regard to electronic signatures, their recognition for purposes other than private law goals, certification and certification service providers, the supervision on certification service providers, the recognition of certificates and certification service providers, the method of guaranteeing, as well as the related topics on which regulation is considered useful.

The ***National Decree, laying down general measures, implementing Article 7(3) of the National Ordinance contracts by electronic means for the establishment of requirements for electronic signatures, certification service providers and certificates to be issued by them*** specifies:

§ 1. *Electronic signature*

Article 1

The following requirements are set for an electronic signature:

- a. it is unique and linked to the person who uses it to the exclusion of others;*
- b. it can be verified at any time;*
- c. control over it rests with the person who uses it to the exclusion of others;*
- d. it is linked to electronic data in such a way that if this data is changed, the electronic signature becomes invalid.*

Article 2

- 1. The following secure means are required for the creation of electronic signatures:*

¹⁵ United Nations Commission on International Trade Law. [Texts and Status](#).

a. It is at least ensured that through appropriate techniques and procedures:

- in practice the data for the creation of signatures can only appear once and their confidentiality is reasonably guaranteed;
- the signature creation data cannot be derived with reasonable certainty and that the signature is protected against forgery using currently available techniques;
- the signature creation data by the legitimate signer can be reliably protected from being used by others.

b. The information to be signed must not be altered and it must not be prevented from submitting this information to the signatory prior to signature.

c. Before proceeding with the creation of an electronic signature, the signatory is adequately informed about the risks associated with the chosen technique, also in comparison with other techniques.

The provisions above establish the legal equivalence for e-signatures. However, the reality is that the use of e-signatures in Sint Maarten is ubiquitous. Amendments of the current framework, or perhaps a revision of the framework in its entirety, can provide greater clarity in the application and interpretation of these provisions.

2.1.6 ELECTRONIC CERTIFICATES

The following provisions of the **National Decree, laying down general measures, implementing Article 7(3) of the National Ordinance contracts by electronic means for the establishment of requirements for electronic signatures, certification service providers and certificates to be issued by them**, as well as Articles 5 and 6, apply to certification services providers and are outdated:

§ 2. Certification service providers

Article 4

1. Without prejudice to requirements regarding the establishment and pursuit of a business in Sint Maarten, certification service providers in Sint Maarten may only offer their services if they have been recognized as such.
2. The recognition referred to in paragraph 1 shall be made by the Minister of Justice, hereinafter referred to as: the Minister.
3. Approval shall be granted if the requirements laid down in Article 5 are met.
4. The Minister shall keep a register containing all recognitions and deletions of approvals.
5. Everyone has free access to the register.

A separate advice note on electronic signatures and certification service providers details the amendments recommended.

2.1.7 NOTARISATION AND APOSTILLES

The Hague Conference on Private International Law advises that no specific legislation is required for Sint Maarten to implement the electronic apostilles programme (e-APP), other than the functional equivalence already contained in its National Ordinance. Rather, the requirements are contained in the Background note on the e-APP.¹⁶

¹⁶ Hague Conference on Private International Law (HCCH). [Background Note on the e-APP](#).

Paragraphs 8 and 13 summarise the two components of the e-APP, with provisions stating that:

8. An e-Apostille is an Article 3(1) Certificate issued in electronic form. It is signed by electronic signature with a digital certificate. e-Apostilles may be issued on electronic documents or on paper documents that have been scanned into electronic form...

13. An e-Register is an Article 7(1) register maintained in a publicly accessible, electronic form. This allows any interested person to verify their Apostille online. While many Contracting Parties maintain an electronic register, the publicly accessible element is what determines its classification as an e-Register. An e-Register may include the details of both paper Apostilles and e-Apostilles.

Sint Maarten has already adopted some provisions which will enable the e-apostilles, particularly functional equivalence. The institutional procedures for electronic apostilles are all that is required for implementation.

2.1.8 ELECTRONIC CONTRACTING CONVENTION

The UN Convention on the Use of Electronic Communications in International Contracts (hereinafter called “the Convention”) is an updated international legal framework for Electronic Commerce that takes into account developments brought on by the Internet and other technological advances as well as the accompanying body of case law that developed internationally since the UNCITRAL Model law on E-Commerce. The Convention amended some of the rules under UNCITRAL in light of electronic commerce practice after the UNCITRAL Model law was drafted.

The Convention seeks to facilitate global e-commerce by establishing a set of rules to guide the use of electronic communications in the negotiation and formation of international contracts. These reflect adjustments and enhancements where insufficient clarity was provided for judicial interpretation in previous forms of statutory construction. Examples of such modifications include the provisions that outline how the time of receipt and place of business in respect of data messages are determined. The Convention also sets rules relating to clickwrap agreements and electronic “handshakes.”

The Convention applies to all electronic communications between parties whose places of business are in different States and where at least one party has its place of business in a Contracting State (Art. 1).¹⁷ The Convention sets out criteria for establishing the functional equivalence between electronic communications and paper documents, as well as between electronic authentication methods and handwritten signatures (Art. 9). It also defines the time and place of dispatch and receipt of electronic communications, tailoring the traditional rules for these legal concepts to suit the electronic context (Art. 10).

The Convention establishes the general principle that communications are not to be

¹⁷ States may restrict its application to cases in which both places of business are in Contracting States (Art. 19).

denied legal validity solely on the grounds that they were made in electronic form (Art. 8). It also allows for the enforceability of contracts entered into by automated message systems, even when no natural person reviewed the individual actions carried out by them (Art. 12). This article recognises the pivotal role of Electronic Commerce in business today. Thus, new provisions must clarify that a contract formed by the interaction of an automated message system and a natural person (example when you are ordering something from Amazon), or by the interaction of automated message systems (example when Amazon's system contacts your credit card system for verification and your credit card system verifies the payment), is not invalid, void or unenforceable merely because automated message systems were used.

This is the basis of the ubiquity of clickwrap, and browse-wrap agreements today. The enforceability of these agreements is now well-settled, and the following US cases were key in creating this framework:

In *Hubbert v. Dell Corporation* the Court ruled that a browse-wrap agreement was enforceable. The court found that as users were exposed to a conspicuous hyperlink over a series of pages that the visual effect would put a reasonable person on notice of the "terms and conditions".¹

In *Southwest Airlines Co. v. Boardfirst L.L.C.*, 2007 WL 483761 at *5 (ND. Tex. Sept. 12, 2007), the court stated that, in considering whether a browse-wrap contract should be upheld, the threshold factor was "whether a website user has actual or constructive knowledge of a site's terms and conditions prior to using the site."

In *Barnett v. Network Solutions*, 38 S.W.3d 200 (Tex. App. 2001), the Texas Court of Appeals upheld a forum selection clause in a click-wrap contract that required users to scroll through a contract before they could click "accept"; it also upheld, in *Hotels.com, L.P. v. Canales*, 2006 WL 228720 (Tex. App. Feb. 1, 2006) a click-wrap contract that did not so require.

In *Druyan and Jagger*, a case involving online purchases of concert tickets, the Court affirmed that a Web site's terms of use that did not require affirmative assent by stating that, by using the site, the user was bound by the site's terms and conditions. In this case the plaintiff had used the website to purchase tickets. The court found that the website's terms of use were sufficiently conspicuous to put users on notice, and thus the disclaimers were valid and binding. Other cases in the US have followed this line of reasoning.

The Convention clarifies that a proposal to conclude a contract made through electronic means and not addressed to specific parties amounts to an invitation to deal, rather than an offer whose acceptance binds the offering party (Art. 11). As a result, the display of a product on an online retailer's homepage will not constitute an offer to the world at large to enter into a binding agreement. However, if a customer elects to purchase a product (for example, by placing the product in a virtual shopping cart), the personalised 'check-out' screen may constitute an offer rather than a mere invitation to treat.

Remedies in case of input errors by natural persons entering information into automated message systems (Art. 14) are also addressed.¹⁸

¹⁸ Text and Articles of the Convention can be found [here](#).

Finally, the Convention leaves significant room for parties to exclude its application or vary its terms within the limits allowed by public policy (Art. 3).¹⁹

Sint Maarten has not adopted the provisions contained within the Convention, but there are some principles (e.g., legality of contracts concluded in electronic form) which are featured in the Sint Maarten legal system. It is recommended that the law be updated to include the provisions of the Convention.

2.1.9 UNCITRAL MODEL LAW ON ELECTRONIC TRANSFERABLE RECORDS (MLETR) AND ENABLING DIGITAL TRADE

One of the key developments for trade financing, supply chain, and logistics management and Financial Technology (FinTech) has been the creation of the UNCITRAL Model Law on Electronic Transferable Records (MLETR) enabling the use of Electronic Transferable Records (ETR).

Adopted in 2017, the MLETR enables the use of electronic form of bills of lading, promissory notes, warehouse receipts, checks, etc. The provisions of this Model Law are determined to be a key enabler in advancing digital trade and trade facilitation.

The MLETR follows the fundamental principles of other UNCITRAL texts on electronic commerce; namely, functional equivalence (articles 8-11 MLETR), technology neutrality and non-discrimination against the use of electronic means (article 7 MLETR). The MLETR therefore gives legal recognition to the use of electronically transferable records that are functionally equivalent to [paper] transferable documents and instruments such as bills of exchange, promissory notes, and warehouse receipts. It does so by establishing a legal equivalence between control of an electronic transferable record and possession of a transferable document or instrument.

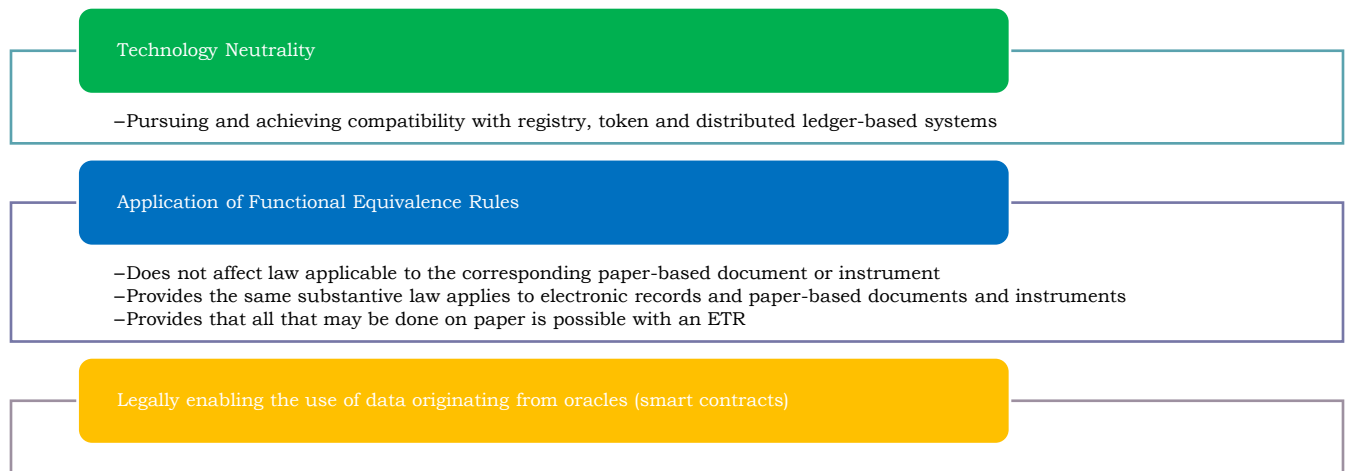
Because of their electronic nature, transferable records may contain dynamic information not available on paper that permits the automation of certain functions. Thus, a contract for sale of goods may envisage a payment of part of the price when the ship carrying the goods arrives in a designated port. An electronic bill of lading issued for that shipment may contain a reference to the position of the ship determined by the GPS. Once the ship's coordinates coincide with that of the port of destination, the electronic bill of lading may automatically send an order to the bank of the buyer to pay the seller the agreed sum of money.

Thus, the MLETR legally enables smart contracts and FinTech, including allowing the merger of finance and logistics supply chains in a single data workflow. Legislative provisions on transferable documents and instruments were the last missing elements in establishing a legislative framework for digital trade-related documents. The MLETR facilitates the implementation of a fully paperless trade environment.

The UNCITRAL MLETR fundamental features as presented in [Figure 4](#) below.

¹⁹ That is, the Convention does not give parties the authority to derogate from, for example, statutory requirements of authentication.

Figure 4: Fundamental Features of the UNCITRAL MLETR²⁰



In addition, the MLETR considers and gives recognition to the most recent technological developments. Accordingly, certain commercial documents and instruments incorporate the right to the delivery of goods or payment of sums of money. Significant information about the commercial transaction can be captured and the information can be used as collateral. This will:

- Enable e-logistics and e-trade financing
- Facilitate the use of a single ETR which may contain all trade-related data. These records are to be up-to-date, complete, accurate, and from an authentic source.

²⁰ Castellani, Luca G. “The United Nations Convention on the Use of Electronic Communications in International Contracts at ten: practical relevance and lessons learned.” *Journal of Law, Society and Development* 3, no. 1 (2016): 132-152.

3. Conclusion and Recommendations

While Sint Maarten has adopted some provisions that reflect the standards, rules, and best practices present in international legal instruments, there are many key provisions which are not featured in its legislative architecture, particularly those related to:

Areas	Actions
Concept of Advanced Electronic Signature	While there are legal provisions governing electronic signatures in the legal framework of Sint Maarten, there is no clear distinction between e-signatures and digital signatures or advanced e-signatures.
Time Stamps	Provisions in respect of time stamps are absent from the legal framework and should be included.
Electronic Communications Convention	The law should be updated to include the key provisions of the Convention. This includes the enforceability of contracts entered into by automated message systems, even when no natural person reviewed the individual actions carried out by them (Art. 12) as well as Remedies in case of input errors by natural persons entering information into automated message systems (Art. 14).
MLETR	Consideration should be given the implementation of the MLETR to facilitate electronic trade and to be consistent with the laws evolving in Europe, the Caribbean and elsewhere.

The current framework is outdated. There is a need to enhance and expand the scope of the national legal framework to update the provisions on electronic contracting, introduce provisions governing negotiable documents and instruments, reduce ambiguity and enhance clarity in respect of trust services, remove archaic provisions, and introduce new ones to support cross-border exchanges.

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- Criminal code
- Landsbesluit elektronische handtekeningen, certificaten en certificatie dienstverleners (*National decree electronic signatures, certificates and certification service providers*)
- Landsverordening toezicht beheerders FMI systemen (*National ordinance on supervisory administrators of FMI systems*)
- Ministeriele beschikking van 11 mei 2021 (*Ministerial Order of May 11, 2021*)
- National Ordinance personal data protection
- Landsverordening overeenkomsten langs elektronische weg (*National ordinance agreements by electronic means*)
- Burgerlijk Wetboek boek 8 (*Civil Code Book 8*)
- Wetboek van Burgerlijke Rechtsvordering (*Code of Civil procedure*)

Curacao:

- Landsverordening bescherming persoonsgegevens (*National Ordinance on the protection of personal data*)
- National Ordinance Agreements by Electronic Means
- State Ordinance Agreements via Electronic Channels
- Landsverordening inzake toezicht op effectenbemiddelaars en vermogensbeheerders (*National Ordinance on the supervision of securities brokers and asset managers*)

Nederland:

- Burgerlijk Wetboek boek 8 (*Civil Code book 8*)
 - Burgerlijk wetboek boek 6 (*Civil Code book 6*)
 - Wet computercriminaliteit I (*computer crime I*)
 - Wet computercriminaliteit II (*computer crime II*)
 - Wet computercriminaliteit III (*computer crime III*)
- processed in the Criminal Code*

Suriname:

- Burgerlijk wetboek (*Civil Code*)
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- Wet toezicht bank- en kredietwezen (*Supervision of banking and credit system Act*)

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