



The views expressed in this presentation are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank Institute (ADBI), the Asian Development Bank (ADB), its Board of Directors, or the governments they represent. ADBI does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with ADB official terms.

# E-commerce Research Findings and Feasible Policy Options for CAREC Countries

**Prof. Dr. Qaisar Abbas**

Chief of Research Division, CAREC Institute

***Virtual Policy Workshop on “Regulatory Framework for E-Commerce Development in CAREC”***

May 28, 2020

# Overview

- **Introduction**
- **1. Research Findings**
- **2. Feasible Policy Options for CAREC Countries**
  - **2.1. Electronic Transactions**
    - 2.1.1 IN FAVOUR OF TECHNOLOGY NEUTRALITY
    - 2.1.2 IN FAVOUR OF TECHNOLOGY SPECIFICITY (DIGITAL SIGNATURES)
    - 2.1.3 IN FAVOUR OF A “HYBRID” LAW WITH ELEMENTS OF BOTH SYSTEMS
- **3. Regulatory Issues**
  - 3.1 Privacy
  - 3.2 Cybercrime
  - 3.3 Consumer Protection
- **4. International Harmonization**
- **5. Policy options to administer an effective regulatory regime**

# Introduction

Today, the whole world is in the information age. The globalization of commerce requires consistent laws and regulations not only to authorize but also to regulate electronic communications.

- *Understanding the importance and potentials of e-commerce, and the lack of coherent legal frameworks for its promotion and utilization in the CAREC region, the CAREC Program has been working with member countries to develop and promote e-commerce in the region under its trade cluster priorities.*
- *To this end, in 2019-2020, the CAREC Institute, ADB and the CAREC Secretariat undertook research projects jointly on **“Regulatory Framework for E-commerce Development in CAREC”***



# 1. Research Findings

Sr. NO	Items	Remarks
1	<b>Scope of Research</b>	The research is covered and reviewed the <b>legislative and regulatory</b> environment from all CAREC members relating to <ul style="list-style-type: none"><li>• electronic transactions,</li><li>• electronic payments,</li><li>• privacy and cybercrime,</li><li>• consumer protection.</li></ul>
2	<b>Legal challenges for E-commerce development</b>	The lack of compatible and comprehensive legal basis
3	<b>Compatibility of legal environment to E-commerce</b>	The CAREC members have all enacted relevant laws but the laws are not always consistent, and they are often out of step with the best practices.
4	<b>Applicability of commercial laws to online transactions</b>	The CAREC countries' commercial laws differ on their applicability to virtual instruments of trade and commerce as well as online transactions.
5	<b>Paths to global and regional economic interconnectedness</b>	CAREC countries have taken different paths, these differences can cause inefficiencies and barriers for trade and commerce. There are two sets of issues: <ul style="list-style-type: none"><li>• Laws that do not recognize e-commerce and</li><li>• Laws that recognize it inconsistently and inadequately in the CAREC region.</li></ul>
6	<b>Economic gains and prosperity to the region</b>	Strong commitments from CAREC countries for the creation of an e-commerce enabling environment at the scale of regional cooperation could bring economic gains and prosperity to the region.

## 2. Feasible Policy Options for CAREC Countries

The research sets out the key policy issues needed to build or harmonize the legal and regulatory framework for electronic commerce :

- ✓ how strictly the state must prescribe **electronic transactions**, acceptable methods of authenticating text and transacting parties;
- ✓ what shall be done to **regulatory matters**, to promote privacy, to prevent cybercrime and to protect consumers;
- ✓ how to follow the leading **international trends**, while expressing some concerns about the ability of private and public actors to make safe choices
- ✓ and about the ability of some member states to administer an **effective regulatory regime**.



## 2.1. Electronic Transactions

- Some CAREC members have a single law on e-transactions, often called “law on electronic signature and electronic document.” Such a law often makes an e-document legally effective only if it has a secure form of e-signature.
- Other states have two laws, one on e-documents and one on e-signatures. They may give some scope for an e-document to stand on its own, legally, though they usually still need some form of e-signature associated with the document for it to be valid.



## 2.1. Electronic Transactions (cont'd)

### **2.1.1 IN FAVOUR OF TECHNOLOGY NEUTRALITY**

- E-signatures can be flexible, serving the commercial and security needs of the transacting parties.
- The state need not be involved in prescribing technology that is bound to change over time (or have laws that require outdated technology.)

### **2.1.2 IN FAVOUR OF TECHNOLOGY SPECIFICITY (DIGITAL SIGNATURES)**

- Many transacting parties, whether businesses or individuals, do not have the capacity to judge the reliability of an e-signing technology or e-document, so having the law prescribe how to do it gives them more trust in the system.
- The business operations and best practices of a certification service provider are by now well-known and can be put into legislation or regulation in consistent ways.



## 2.1. Electronic Transactions (cont'd)

### **2.1.3 IN FAVOUR OF A “HYBRID” LAW WITH ELEMENTS OF BOTH SYSTEMS**

- Some parties do not need the full PKI (public key infrastructure) treatment and find it expensive and difficult.
- Some transactions do not justify the expense of using digital signature technology and the services of a trusted third party.
- On the other hand, some communications are particularly important (those with public officials, for example, or those in very high-value transactions) and require more assurance of authenticity than a routine commercial deal.



# 3. Regulatory Issues

## 3.1 Privacy

- Most of CAREC members have some form of privacy legislation. The laws tend to reflect the main points of the international standards: personal data should be collected only with the consent the data subject and only for the purpose for which the consent was obtained.
- All CAREC members should have privacy legislation consistent with international best practices.

## 3.2 Cybercrime

- Most CAREC members have very consistent provisions on cybercrime. Those that do not, should enact them.



## 3. Regulatory Issues (cont'd)

### 3.3 Consumer Protection

- Many CAREC members have no consumer protection laws under that name, though provisions against fraud or misrepresentation would be relevant to consumers as well as to businesses. The laws in place in the countries that do have them are quite varied, some modern, some out of date or partial.
- CAREC members should adopt consumer protection legislation consistent with the UN and OECD models, with particular attention to the ability of the state to offer reliable enforcement of consumer rights given by the legislation.



## 4. International Harmonization

The principal relevant international standards are:

- A. United Nations Convention on the International Sale of Goods (CISG): The CISG, originally adopted in 1980, sets out basic rules of contract law for international sales of goods. Expert review in the early 21st century concluded that it could be applied to electronic sales.
- B. UN/ESCAP Framework Agreement on the facilitation of cross-border paperless trade (Framework Agreement): The Framework Agreement sets out principles and priorities for member states to legislate on cross-border e-commerce, without prescribing specific texts. It also provides opportunities for collaboration and mutual support in legal development.
- C. United Nations Convention on the use of electronic communication in international contracts, or Electronic Communications Convention (ECC): the ECC sets out how electronic contracts can be integrated into the commercial laws of member states. It can be made to work as domestic law as well.

## 5. Policy options to administer an effective regulatory regime

To facilitate implementation of recommendations, all CAREC members should collectively decide as a priority to ensure that their laws support electronic commerce, including rules on privacy, cybercrime and consumer protection, both domestically and among themselves.



## 5. Policy options to administer an effective regulatory regime (cont'd)

- Towards this goal, each state should take the following steps:
  - ✓ Establish a dedicated multi-ministry task force with support at the highest levels.
  - ✓ Include private-sector representation on some version of this group.
  - ✓ Coordinate legal advice across government. Different departments or agencies must end up with consistent opinions on key matters.
  - ✓ Ensure that all parts of the government and other players have the right and capacity to communicate electronically.
  - ✓ Replicate the national work at the international level, and coordinate the both national and international levels.
  - ✓ Work closely with ESCAP technical and legal working groups, if not already doing so. This can be done even before becoming a member of the Framework Agreement.

Thank you for attention