DEALING WITH LEGAL ISSUES

PART VII

VOL 1

Volume 1

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Single Window systems must operate in an enabling legal environment. The Single Window operator must be duly authorized to act on behalf of the public authority as the single entry point. National legislation must provide for functional equivalence between electronic and paper-based methods. Thirdly, regulations must provide for agency-specific requirements to be formally replaced with those of the Single Window.

Contents

1. Introduction

This Part deals with the question of the enabling legal environment for the Single Window. In the absence of enabling laws and regulations, the Single Window could face hurdles. As the Single Window initiative takes shape, the project leadership must assess any gaps regarding legislation. Part VII lists the legal issues that must be tackled in building a Single Window environment, and the ways of dealing with them. It contains a description of the features of the Single Window environment from a legal point of view.

This Part relies on existing knowledge on the subject (e.g. UN/CEFACT Recommendation No. 35 and the analogous aspects of a virtual enterprise), while trying to distil findings from implementation of the Single Window around the world. Furthermore, it points out the most problematic legal questions, clarifying and illustrating their significance.

The Section entitled **'The Single Window: Key Legal Characteristics'** provides a description of the most important legal aspects of a Single Window, and the respects in which they differ from those of traditional, stand-alone systems operated by cross-border regulatory agencies (CBRAs).

The next Section provides a '**life-cycle perspective' of the Single Window,** starting with its business definition, going through to its establishment as a legal entity, its operations and, finally, its renewal phase, when there is a fresh look at its *raison d'être*.

The final Section deals with legal issues that may arise from cross-border **regulatory regimes and business processes in a Single Window environment**. Part VII concludes by highlighting the main lessons for executive management.

2. The Single Window: Key Legal Characteristics

As governments take steps in establishing a Single Window environment, they will be required to bring the initiative under a formal and legally sound regime. Cross-border regulatory agencies that have been running automated systems in their own right *are already required* to handle the legal implications for their operation. The theme of this Section is that a Single Window environment comprising automated systems is also bound by similar requirements, but may have certain additional characteristics that distinguish it from the traditional CBRA IT systems.

2.1 Defined Legal Authority

Automated information systems and their public manifestation (e.g. web portals, interface specifications and access channels) must have a legally defined existence. Without that legal definition, such systems cannot participate in the fulfilment of government's regulatory obligations. Such facilities will be operating in a national jurisdiction, and will be governed by national legislation prescribing all legal requirements and limits for their operation.

Traditional stand-alone systems are underpinned by the authority in national law that brings the regulatory services into existence. Customs law and its secondary regulatory structures provide for the existence of the IT system that operates Customs clearance services. For example, Section 126D of the Australian Customs Act 1901 mandates the Comptroller-General of Customs to establish and maintain such information systems as are necessary to enable persons to communicate electronically with Customs, thereby giving those systems legal authorization. There is a further expression of this mandate through statutory provisions which specify the technical interface with these information systems.

Each organization that participates in international trade has a distinct service to provide. But the possibility of collaboration with other agencies opens doors for participation in a Single Window environment – a concept which covers different government agencies joining forces to provide a sophisticated service. Such operations cannot be handled efficiently if each agency, on its own, provides the service in a disjointed fashion. Information and communication technology functions as the engine that moves these connected entities, big or small.

The United Nations Network of Experts for Paperless Trade (UNNExT) has published the document 'Electronic Single Window Legal Issues: A Capacity-Building Guide'. It covers the wide-ranging legal issues that are related to the development and operation of a Single Window environment. The Guide also touches upon the fundamental legal concepts and approaches derived from e-commerce that apply to the Single Window environment. The Guide points to the need to systematically examine the processes that can be employed to identify and assess those potential gaps in domestic law that might hinder the establishment of a Single Window and its full operation, or hinder the (cross-border) legal interoperability of the Single Window with other government and non-governmental entities participating in the Single Window environment.
The basic legal elements necessary to operationalize the Single Window are also examined. The Guide acts as a checklist and helps experts and policy makers to develop a 'legal gap analysis', which is a major step in developing the appropriate legal framework.

2.2 Legally Enabled Entity

The Single Window concept involves collaboration between information systems running services which are operated by individual CBRAs or by trade, each with its legal existence. **In other words, it should be fully established in law.**

One of the approaches is the creation of an entity that is distinct and set apart from these others. Governments, however, have a choice as to the type of entity that needs to be established. Some possible options are:

- ✓ A government department defined in law or regulations with specified executive and agency powers and responsibilities.
- ✓ An autonomous entity authorized by legislation or by executive order.
- ✓ An entity established by company law, whether private or public.
- ✓ Any other voluntary association of entities covered by other national legislation.
- ✓ A joint venture with commercial entities.

Current trends point to the predominance of government departments and government-controlled organizations as the entities running the Single Window environment.

The Single Window operator needs to maintain 'neutrality' or be at 'arms-length' from the regulatory agencies and their automated systems, each potentially having a distinct legal personality.

If third parties in trade and transport transact with a Single Window as if it were a CBRA, then this will have to be formalized as a relationship between the Single Window operator and the participating CBRAs, and that relationship should be based on sound legal principles. By specifying that the Single Window operator is the sole carrier of data into and out of the CBRA, the government gives it a unique legal status. Observance of procedures by the regulated entities will depend on the Single Window operator performing its statutorily assigned functions effectively.

The Single Window may be identified by its visible manifestation, such as its web portal. However, it is the organization that it represents that matters from a legal standpoint. The Single Window operator or orchestrator will not only serve the participating organizations, but also function as their enabler. The operator assumes liabilities on behalf of the CBRA user. But if the operator is government-owned, it will enjoy sovereign immunities. The Single Window has to have a legal personality and a real identity. In the absence of these attributes, it cannot be held liable.

In the ordinary course of events, the Single Window operator needs to be an entity that can conclude a contract. For instance, the Single Window Operator should, in its own right, through its web interface, enter into contracts for user registration on behalf of the CBRAs.

Rules of operation of the Single Window may require separate statements of responsibility for each participating CBRA. Alternatively, all participating CBRAs could be held jointly and severally liable for Single Window operations.

It is not envisaged that the Single Window operator be responsible for any damages caused to trade. Healthy cross-border regulation exempts bona fide actions of authorities. The same principle would apply to the Single Window operator acting in good faith on behalf of the CBRA. However, to place responsibility on the Single Window operator and hold it to the consequences of its actions or omissions, there need to be two kinds of agreement, as outlined below.

The first is the 'master-service agreement' between the Single Window operator (or orchestrator) and the CBRA. This includes the performance of obligations, representations and warranties, which are often supported by service level agreements, interconnection security agreements (ISAs), etc.

The second is the 'end-user' or 'terms of use agreement' governing the client relationship between the Single Window operator/orchestrator and the trade user. This may cover IPR and licensing, service levels, performance guarantees, any user fees, administrative fines, penalties, remissions and refund policies.

The Figure below helps locate the stage at which the Single Window operator is appointed.

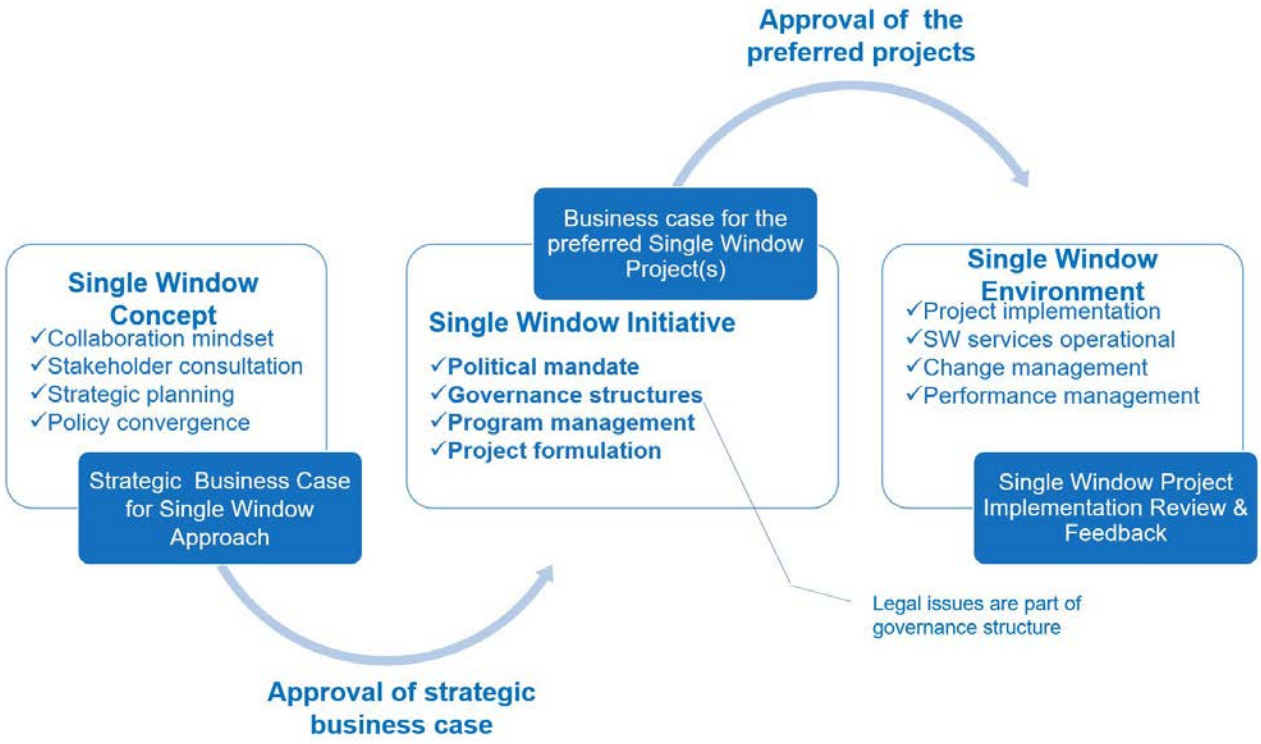

Figure 1: Legal issues should be settled before going ahead with the Single Window project.

Web technologies make it possible for the Single Window to maintain a virtual presence, but it is still necessary to endow it with a legal personality, and it should be possible to identify the members responsible for the Single Window.

Where the Single Window operator is an extension of the government, its existence is straightforward. However, if the Single Window operator is an entity that has private sector holdings, it has to have a legally defined structure, e.g. have a registered office and executive agents that have a legal personality in order for third-party entities in the trade and transport sector to perceive the Single Window as a 'going concern' with which they can do business.

The Single Window operator should be able to enter into interchange agreements and memoranda of understanding for data exchange with other agencies.

2.3 Functional Equivalence

It is common to see legal requirements which assume or prescribe the use of paper-based documentation. In moving to electronic commerce methods, there should be enabling national laws to permit trade-related and regulatory documents to be electronic. When communications between contracting parties or those subject to government regulation require certain documents to be in writing, to have signatures affixed or to be presented in the original, this imposes restrictions on digital commerce. Electronic means of communication, of documentation and of record-keeping, etc. which use computer-based methods are functionally equivalent. Functional equivalence is a basic requirement not just for the Single Window, but also for all automated information systems

supporting electronic commerce and e-government. The following is an excerpt from Singapore legislation.

S 25(1) of the Electronic Transactions Act 2010

"(1) Any public agency that, under any written law —
(a) accepts the filing of documents, or obtains information in any form; (b) requires that documents be created or retained; (c) requires documents, records or information to be provided or retained in their original form; (d) issues any permit, licence or approval; or (e) requires payment of any fee, charge or other amount by any method and manner of payment, may, notwithstanding anything to the contrary in such written law, carry out that function by means of electronic records or in electronic form."

Similarly, under Indian legislation, Section 4 of the Information Technology Act 2008 reads as follows:

"4. Legal Recognition of Electronic Records

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is:

(a) rendered or made available in an electronic form; and
(b) accessible so as to be usable for a subsequent reference."

2.4 Identification, Authentication and Authorization

The online services accessible to users on the web portal of a Single Window are the proverbial tip of the iceberg. In addition, the Single Window must adopt a secure and legally sound solution in order to provide access to diverse applications and business processes of participating CBRAs, and to give Single Window users a sense of seamless access.

UN/CEFACT Recommendation No. 35 suggests the adoption of an 'identity management' solution. The Single Window solution needs to provide 'rule-based and role-based' access to heterogeneous systems. Identity management solutions that are based on open standards can promote interoperability by federating and managing identities of users across different organizations. It is also necessary to isolate and decouple the access control mechanisms from the underlying application and database resources which may be hosted on disparate platforms.

There is hardly any legislation which explicitly addresses identity management systems (European Commission (TURBINE Project),2009). However, privacy and data protection law squarely applies to data held in identity management systems. Some other regions have also pursued paths towards international standards in this area, most notably the APEC Cross-Border Data Privacy 'Pathfinder' programme. Be that as it may, the Single Window operator must meet national legislation on privacy, and commercial confidentiality must be observed.

There is a concern regarding the ability of identity management systems to enable digitally available personal data in disparate systems to be linked up, and to observe the actions of individuals, as well as a concern that individuals do not have the ability revoke their identity. Data protection authorities therefore lay stress on the *unlinkability* of the information contained in identity management

systems, the *unobservability* of actions, and the *revocability* of identity as legal principles that should govern identity management systems and federated identities.

These concerns need to be reconciled with the broader purposes of using identity management systems in a Single Window environment: automated systems operated by authorities will in some applications legitimately seek to link up information about economic operators for risk profiling purposes, and therefore deliberately seek linkability. Further, they like to maintain observability and auditability of actions by individuals: the latter are not at liberty to revoke their engagement with the identity management systems operated on the Single Window and, in any case, should not be able to repudiate their actions.

The contracts that bring users on board a Single Window system need to reconcile these opposing concerns of individual privacy and legitimate business interest. Having 'accepted' the terms of participation in a Single Window environment, economic operators waive their rights to privacy and commercial confidentiality to the extent that the information is for the legitimate use of CBRAs.

Identifiers issued to the individual user should be somehow linked to his/her *civil identity* that is duly issued by the State. This is analogous to economic operators being identified based on their legally assigned identifiers (e.g. their business registration number or EORI number). CBRAs need to identify regulated entities in the event of having to proceed against them to enforce cross-border trade regulations. Furthermore, it is a legal person that needs to be held to account for his/her observed actions in the automated systems.

UN/CEFACT Recommendation No. 14

UN/CEFACT Recommendation No. 14, 'Authentication of Trade Documents by Means other than Signature', has been revised. The Recommendation seeks to reinforce the message contained in the earlier text on the need to do away with paper signatures and to encourage the use of electronic data transfer in international trade. It exhorts governments to review national and international requirements for signatures on trade documents in order to eliminate the need for paper-based documents, by meeting the requirement for manual-ink signatures through authentication methods that can be electronically transmitted. The message is equally valid for the traders and their solution providers, who should also examine business processes to identify signatures (of any kind) and to eliminate them and, where not possible, to pursue the electronic transfer of trade data and the adoption of authentication methods other than the manual-ink signature.

The main points in the Recommendation are:

- ✓ removal of the requirement for a signature (manual or its functional equivalent) except where essential for the function of the document
- ✓ introduction of other methods to authenticate documents
- ✓ creation of a legal framework that permits and gives equal status to authentication methods other than manual-ink signature
- ✓ regular review of documentation used for domestic and cross-border trade, possibly by a joint public and private sector effort

Authentication and authorization are mechanisms performed by the automated system. The former is the mechanism under which the system is securely able to identify the user and to ascertain whether the user is the person he or she is claiming to be. The latter is about the level of access of a user, and whether the user is allowed to perform a particular operation (e.g. a database update operation).

Consistent application of identification, authentication and authorization procedures is vital for ensuring that the information system is secure and is delivering a consistent, auditable service. Single Window services grow with the trust of their users over years of reliable operation. The legal validity of actions performed by users will be challenged in the absence of a legally sound mechanism of identification, authentication and authorization.

The conditions under which electronic records, electronic documents and contracts will have probative value are determined according to national legislation. Determinations about digital evidence will be made in courts, where experts will have to assist judges in deciding on the evidentiary value of access logs (for instance, whether such records were authentic, reliable and intact). In the case of electronic records or documents, valid digital signatures will have high evidentiary value.

Digital evidence is an important legal issue. In some countries, digital signatures may not be given more probative value than other types of electronic signature. Further, there are costs and reliability issues associated with digital signatures that come into play in many national environments. Thus, whilst digital signatures are technologically sound and feature in the WCO SAFE Framework of Standards as a means for securing data, there are other ways of acquiring data, and the measures taken to protect it must be commensurate with the risks associated with its breach.

3. The Single Window – a Life-cycle Perspective

From a legal point of view, the main phases are:

(i) Exploration phase: In this phase, the purposes and motivations are explored. At this time, authorities identify candidate services that will be covered by the Single Window and will coincide with the strategic planning, policy modelling and preparation of the strategic business case.

(ii) Formation phase: This phase begins with the approval of the strategic business case and the delivery of the political mandate. A law or decree establishing the Single Window initiative could be pronounced. Alternatively, a master agreement between the participants of the Single Window environment is entered into. Whichever way a Single Window initiative formally comes into being, the entity becomes a legal person which can begin to assume legally ordained internal and external responsibilities.

(iii) Regulation phase: The Single Window operator or orchestrator formally establishes its body corporate, and its legally appointed executive officers enter into agreements on its behalf. The legal basis for establishing the Single Window operator/orchestrator and the collection of arrangements (primarily, interchange agreements) with internal and external stakeholders constitutes the regulatory framework of the Single Window environment. (This is separate from the substantive laws governing the cross-border movement of goods or other movements.)

(iv) Operation phase: In this phase, the legal arrangements that were firmed up in the formation and regulation phases become operational and are therefore put to the test. If it is found necessary, these legal provisions are modified from time to time. In a changing environment, however, it is important to provide predictability and ex-ante certainty to traders.

(v) Evolution phase: The agreement will show parties how to disengage from the Single Window, and the anticipated steps for doing so.

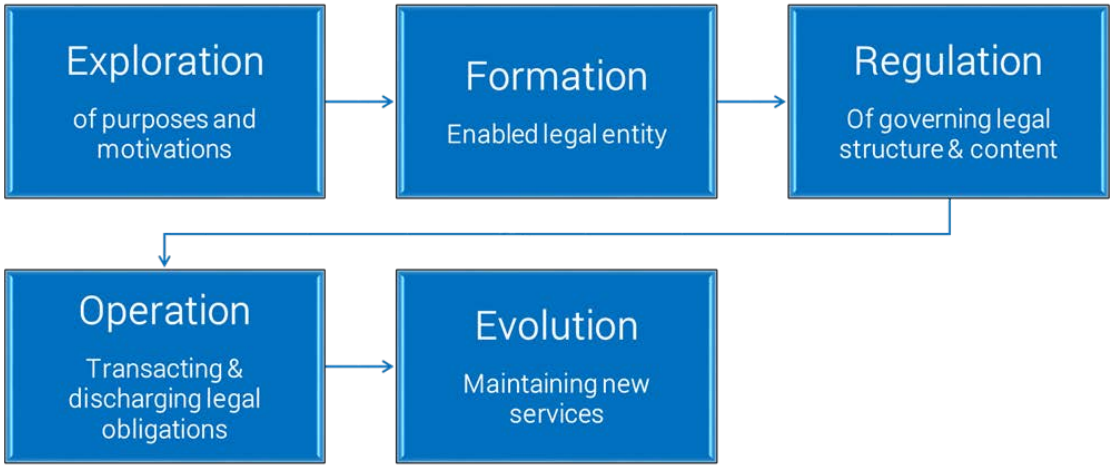

Figure 2: Legal issues – a life-cycle view.

3.1 Responsibilities of the Single Window Operator

The distinction between the internal (authority-facing) and external (trade-facing) legal relationship in a Single Window environment is useful in classifying the legal issues. Internal agreements are those that are entered into between CBRAs, and between Single Window operators and CBRAs, and would typically include interchange agreements, service level agreements, intellectual property rights, representations and warranties, identity management, liability and insurance, legitimate use of data, data protection, and data life-cycle arrangements.

Between government departments, MoUs are preferred over legal agreements, as explained previously. On the other hand, in the legal arrangements with external users of the Single Window, a similar set of issues will dominate. These are privacy issues, data protection, service levels, identity management, liability and insurance.

3.2 Establishing the Single Window Operator

The organizational structure for the establishment and operation of a Single Window facility will address the need for the Single Window operator/orchestrator to come into existence as a legal entity. Each country has to decide on the character of this legal entity. It could be a private or a public sector organization incorporated under national legislation as a joint stock company, a

registered society, a not-for-profit organization, a trust or a partnership. It could even be a body that is independently established by law. This has implications for Single Window operations.

4. Legal Issues Grouped by Business Processes

In the previous Section, legal matters were examined in terms of the life-cycle of the Single Window operation. In this Section, legal issues are considered from a business process perspective. The business processes in a Single Window are described below, along with the corresponding legal issues.

4.1 Registration/Regulatory Authorization

The typical 'Customs Act' begins with a section on definitions for the entities that will have legal obligations in international trade, including where, how and by whom goods should be entered for import, export and transit. The same is true in the legislation for partner CBRAs, which defines the entities that have obligations regarding, for example, traded goods. These laws and regulations also cover means of transport and crew.

Registration/regulatory authorization processes are at the core of the Single Window. Data about parties, locations, transport means, etc. are first recognized by the national Single Window operator. The registered entities have a legal existence in the respective legislations of the CBRAs. These registration processes may also be viewed in conjunction with regulatory pre-verification processes in which the respective regulatory authorities have the opportunity to verify information provided by users as part of the registration process. These pre-verification processes may be determined by a combination of regulatory and administrative imperatives.

Before access is granted to any of the Single Window services, certain regulatory requirements of the Single Window operator need to be fulfilled. These conditions are part of the registration processes in which the Single Window operator establishes a legal relationship with the various actors that use the Single Window services. Typically, these would be the legal agreements to be entered into between the responsible official from the Single Window operator and the relevant official acting on behalf of the registering entity. There could also be multiparty agreements, for instance, between the trade/transport actor (subscribing party), Customs/the partner CBRA with authority to issue regulatory approvals ('relying' party), and the National Single Window operator (service provider). The parties with whom Customs interacts are called actors, and are divided into the following broad groups:

National Single Window operator: It is assumed that a 'Single Window operator' will be established as a legally enabled entity, with the mandate to provide Single Window services. In describing the Single Window business processes, it is perhaps necessary to mention the existence of national Single Windows in different jurisdictions. There may be a national Single Window in existence in the country of origin (NSW at departure), in the transit country (NSW at transit) and the destination country (NSW at destination). The interaction between national Single Window operators provides the G2G dimension in a Single Window.

Economic operators: Economic operators are parties from trade and transport that play a role in a Single Window environment. They often use intermediaries called agents, who play certain roles on

their behalf. These roles are defined under cross-border legislation. Any compliance-related activity that is supposed to be performed by an economic operator can also be carried out by its agent.

The business processes and legal issues involved are listed in the table below:

Table 1: Registration/Regulatory Authorization.

REF	Business Process	Brief Description
R1	Bringing a new cross-border regulatory agency (CBRA) into the Single Window environment	The Single Window operator captures the necessary information and performs certain actions to register a cross-border regulatory agency. (This use case describes how a CBRA is brought on board a Single Window environment.) Legal Issues: →Regulation defining the facility provided by the Single Window operator. →Regulation that the installation is a legally valid means to fulfil regulatory obligations. →Regulation establishing the right of the operator to host Single Window services, and the operator's corresponding roles and responsibilities.
R2	Adding a new service to the Single Window	The Single Window operator makes arrangements to provide a service on behalf of a CBRA. Legal Issues: →Obligations of the Single Window operator and the CBRA in relation to the hosted services. →Legal agreement between the CBRA and the Single Window operator on security, privacy, data management life-cycle, standards of service, etc.
R3	Registering authorized Single Window users	The Single Window operator makes arrangements to provide the Single Window information system to users belonging to a CBRA or to an economic operator that is the recipient of a service defined in R2. The user is an individual belonging either to an economic operator or CBRA that is an entity distinct from the economic operator for governance within a Single Window. Legal Issues: →Regulation covering onboarding procedures. →Granting rights to the users (individuals from trade and CBRAs) for accessing the information resources (e.g. web/EDI applications) offered by the Single Window operator. →Regulatory definition of what constitutes user identification and authentication, use of digital signatures, etc. →User's conditions of participation regarding each of the services.
R4	Registering an economic operator in the Single Window	The Single Window operator in relation to cross-border regulation captures all relevant particulars of an economic operator and registers the economic operator for the requested services. Registration leads to the creation of a 'trader account' which needs to be managed by the Single Window for the lifetime of its existence. Legal Issues: → Harmonizing legal definitions for business entities that deal with CBRAs. → Regulatory verifications concerning economic operators, identity

		management processes. → Managing identities for different CBRAs. →Managing identities between NSWs and community systems. →Managing identities globally between national Single Windows implemented in various regulatory territories (ISW and GNC scenarios).
R5	Bringing a new authorized IT system into the Single Window environment	The Single Window operator makes the necessary arrangements to register the IT systems linked with the operation of Single window services. Legal Issues: → Regulation granting rights to the IT applications and IT devices (belonging to economic operators and CBRAs) for accessing the information resources (e.g. web/EDI applications) offered by the Single Window operator. →Regulation specifying the conditions of participation for each of the services.
R6	Adding a new regulatory location	The Single Window operator in relation to cross-border regulation captures all relevant particulars of a regulatory location. Legal Issues: →Legally defined locations where goods (and transport means) are approved for crossing the border, for storage, warehousing, examination and testing, or are otherwise dealt with in the course of international trade. Different CBRAs define these locations differently in their respective legislations.
R7	Adding a new regulatory facility	The Single Window operator in relation to cross-border regulation captures all relevant particulars of a regulatory service. Legal Issues: As for R6.
R8	Registering a regulatory product	The Single Window operator in relation to cross-border regulation captures all relevant particulars of a regulatory product. Legal Issues: →Regulatory processes that register products; recognize the product identities, attributes, regulatory classification, regulatory restrictions, conditions for import and export, etc. → Each CBRA may have different ways of identifying and classifying tradable goods/products.
R9	Registering a regulatory transport means	The Single Window operator in relation to cross-border regulation captures all relevant particulars of a regulatory transport means. Legal Issues: →Laws dealing with regulatory certification of transport means that are used to carry goods in and out of a regulatory territory. These are subject to global regulations.

4.2 Application for Licences, Certificates, Permits/Other

All movements of goods and means of transport across the border are subject to tariff and non-tariff regulatory regimes. With the liberalization of trade, most traded goods in the world are not subject to quantitative restrictions. However, there are still a variety of non-tariff restrictions imposed by

national laws and international conventions. These restrictions impose conditions that must be met before regulatory authorities allow imports, exports and transit. The conditions are often documented and expressed in licences, permits, certificates and other documents stating that they have been met in the context of transactions. In spite of the variety of goods that are subject to such restrictions, use cases are very similar. The process includes: (i) application for licences/permits/certificates/other; (ii) pre-issuance verifications; (iii) transactional compliance checks at import or export; and (iv) post-transactional compliance/analysis.

The broad process of application and issuance of licences, permits or certificates remains the same, despite differences in regulations. These procedures vary for different commodities but have the same underlying patterns. The table below describes the business process.

Table 2: LPCO business processes.

L1	Application for licence, permit, certificate/other	The economic operator applies to a cross-border regulatory agency for a licence, permit or a certificate and receives a response. There are pre-issue, post-issue and transactional verification processes during which LPCO validity, applicability, quantities, amounts, etc. are verified. Legal Issues: → Recognition of certificates and licences issued in another country. →Delegation of authority for regulatory verification (where such delegation is envisaged).

4.3 Advance Information

The SAFE Framework of Standards requires the collection of information on international supply chains to be provided to Customs in advance of the transaction. Such information must be provided to regulatory agencies at export and import in the form of pre-departure and pre-arrival goods and cargo declarations. Information may also have to be provided on the containers loaded on board the vessel, in the form of a vessel stow plan (VSP) and container status (CS) messages. The table below provides details of the processes for advance information.

Legal Issues: Common to all processes in advance information

- ✓ Enabling legislation for advance reporting.
- ✓ Where legislation authorizes 3rd parties to submit this information on behalf of the carrier, the liability of such a 3rd party needs to be legally defined.
- ✓ What is the legal arrangement whereby advance information that is submitted to the NSW at departure is transmitted for onward use by the NSWs at transit and destination? (In the interests of feasibility and desirability, such transmissions would be addressed separately.)

4.4 Goods Declaration/Cargo Report/Conveyance Report

The processes of goods declaration, cargo reporting, and Conveyance reporting are described in the revised Kyoto Convention(rKC) and its Guidelines. The rKC guidelines do include scenarios in which businesses submit declarations and supporting documents electronically at one place as in a Single Window type of interaction. In addition to the models for submitting a declaration, there is

the 'response package' model, which depicts the business processes associated with a CBRA's response to a declaration. It is assumed that, in a Single Window environment, regulatory data for submission to government will be harmonised and that the data exchange points between the economic operator and Customs will coincide with the relevant exchanges with a partner CBRA. Thus the regulatory reporting events for Customs may also be used simultaneously as events to notify the partner CBRAs. This signifies the principle that one-time submission requires harmonized data and documentation.

Legal Issues: Common to all processes in the goods declaration/cargo report and conveyance report

- ✓ Enabling legislation governing these declarations – not just for Customs, but also for partner CBRAs (legislation covering the obligation to declare – definition of the taxable events, liability to duties, taxes and fees, the manner in which the various levies are imposed and their amounts, etc.).
- ✓ CBRA-specific legislation that enables the receipt of this data digitally, including logical and security controls specifically defined in the law/regulation. The mandate of comprehensive e-governance legislation to move to digital or paperless processes.
- ✓ Regulatory procedures defining the place and timing of declarations to be harmonized between Customs and partner CBRAs.
- ✓ Authority to access data, use data and process data received as part of the processes covered by CBRA-specific legislation. CBRA authority to view and make determinations based on information collected in the 'pool' formed in the Single Window environment needs to be addressed correctly.
- ✓ Inter-agency data exchange procedure and legal liabilities and obligations of agencies handling the data.
- ✓ Treatment of data received as part of declarations and reports under legislation dealing with the rival concerns of data privacy and information transparency.
- ✓ The action of checking the declaration, confirmation of verification and legally valid notification of administrative determinations arrived at by authority.
- ✓ Legislation often authorizes a 3rd party to submit this information on behalf of the carrier or importer. The liability of such a 3rd party needs to be legally defined. Ability to use data and exchange data with community systems that act as legally authorized 3rd party suppliers of regulatory declarations and reports.
- ✓ Legal provisions in a multiparty agreement between the parties concerned to enable filing of declarations through or by a 3rd party is a pertinent legal issue.
- ✓ What is the legal arrangement whereby declaration/report data submitted to the NSW at departure is transmitted for onward use by the NSWs at transit and destination? (In the interests of feasibility and desirability, such transmissions would be addressed separately.)

5. Conclusion

This Part discusses the legal aspects in a Single Window environment, first by examining five main legal issues, then by considering these issues from a 'life-cycle' perspective in a Single Window environment. Lastly, it outlines the changes needed to legal regimes from a business process perspective.

Four distinct legal characteristics of a Single Window solution are discussed. For a Single Window to exist, it has to have a defined and explicit legal authority, which is expressed through legislation. Then, it has to become a distinct legal entity that must have the capacity to assume liability and powers to conclude contracts, chief among which will be interchange agreements. These

interchange agreements will legally define and govern the acts of information exchange. Interchange agreements may contain data and messaging standards and service ontology, which may have to be harmonized across multiple agencies. Such an exercise involves going back to the original legislation of the participating CBRAs. Additionally, these agreements will have the relevant normative interface specifications.

As it handles data from traders, the Single Window should have the legal authority to collect, possess, process and share the data for legitimate purposes. The privacy of the information will have to be safeguarded, and sharing should be prohibited except as expressly permitted or provided for in the statute.

In order for transactions in the Single Window to have the same legal validity as manual transactions, the principles of identification, authentication and authorization need to be adopted. Supporting legislation on digital documents, electronic signatures and electronic contracts based on model codes from UNCITRAL are helpful. Identity management systems form the foundation of all other Single Window services and depend upon identification and authentication. This Part discusses the common legal challenges faced in employing identity management systems, which can be overcome either through enabling legislation or through agreed terms and conditions that provide the necessary waiver from certain obligations. Multiparty interchange agreements should incorporate appropriate enabling provisions so that identity management systems operate harmoniously with the restrictions imposed by privacy legislation.

The Part examines legal issues from a life-cycle perspective and from the point of view of business processes in a Single Window environment. Executive management should identify and appoint qualified legal experts to help establish the enabling legal framework for the Single Window environment.