

## EXPLANATORY STATEMENT

This Bill seeks to repeal and re-enact the Electronic Transactions Act (Cap. 88) to provide for the security and use of electronic transactions, to implement the United Nations Convention on the Use of Electronic Communications in International Contracts adopted by the General Assembly of the United Nations on 23rd November 2005 (the UN Convention) and to provide for matters connected therewith.

### PART I

#### PRELIMINARY

Part I sets out the preliminary provisions.

Clause 1 relates to the short title and commencement.

Clause 2 sets out definitions of the terms used in the Bill. The definitions of “addressee”, “automated message system”, “communication”, “electronic communication”, “information system”, “originator” and “place of business” have been adopted for consistency with the UN Convention.

Clause 3 contains a statement that the Bill is to be construed consistently with what is commercially reasonable under the circumstances and to give effect to certain purposes specified in that clause such as facilitating electronic commerce, promoting public confidence in the integrity and reliability of electronic records and electronic commerce and implementation of the UN Convention.

Clause 4 excludes rules of law requiring writing or signatures in certain matters from the application of certain provisions of the Bill as specified in the First Schedule. The Schedule re-enacts the exclusions provided by section 4 of the repealed Electronic Transactions Act with the addition of references to various specific types of documents of title in item 2 (for consistency with the UN Convention). The express reference to implied trusts in item 3, clarifies that implied trusts are not excluded from the application of Part II. The Minister may, by order published in the *Gazette*, amend the First Schedule.

Clause 5 clarifies that Part II does not affect party autonomy to exclude or agree to the use of electronic records, communications or signatures (electronic transactions), or to agree to additional requirements as to the form or authentication of a contract or transaction. It also clarifies that parties to a contract or transaction may by agreement exclude, derogate from or vary the application of section 6, 11, 12, 13, 14, 15 or 16 to the contract or transaction. In addition, it clarifies that agreement or consent to the use of electronic transactions may, unless otherwise agreed or provided by a rule of law, be inferred from the conduct of the parties.

## PART II

### ELECTRONIC RECORDS, SIGNATURES AND CONTRACTS

Part II provides for the legal effect and status of, and rules relating to, electronic transactions and electronic signatures in general.

Clause 6 states, for the avoidance of doubt, that information cannot be denied legal effect solely on the ground that it is in the form of an electronic record. In other words, the form in which certain information is presented or retained cannot be used as the only reason for which the information is denied legal effect, validity and enforceability. The clause does not, however, establish the legal validity of any given electronic record or of any information contained in the record.

Clause 7 provides that an electronic record satisfies any rule of law that requires information to be written, in writing, presented in writing or provides for certain consequences if it is not in writing, if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

Clause 8 provides that an electronic signature satisfies any rule of law which requires a signature if it meets certain criteria. These criteria, adopted from the UN Convention, replace those previously under section 8 of the repealed Electronic Transactions Act.

Clause 9 provides that where a rule of law requires certain documents, records or information to be retained, the requirement is satisfied by retaining them in the form of electronic records subject to certain safeguards. If the rule of law already expressly provides for such retention in electronic records, the clause will not apply. A public agency may impose additional requirements for the retention of electronic records under its jurisdiction.

Clause 10 provides, in alignment with the UN Convention, that where a rule of law requires certain documents, records or information to be provided or retained in its original form, or provides for certain consequences if it is not, the requirement is satisfied by retaining them in the form of electronic records subject to certain safeguards. The Minister may, by order published in the *Gazette*, exclude the provision from applying to any such rule of law.

Clause 11 states, for the avoidance of doubt, that an offer and an acceptance of an offer in the context of the formation of contracts may be expressed by electronic communications.

Clause 12 states that as between an originator and the addressee of an electronic communication, a declaration of intent or other statement cannot be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic communication.

Clause 13 modifies the rules under the repealed Electronic Transactions Act relating to the determination of the time and place of despatch and receipt of electronic communications, for consistency with the UN Convention.

Clause 14 provides, in alignment with the UN Convention, that a general proposal to conclude a contract made electronically is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Clause 15, in alignment with the UN Convention, facilitates the formation of contracts using automated message systems.

Clause 16, in alignment with the UN Convention, allows a natural person making an input error in an electronic communication with an automated message system to withdraw the portion of the electronic communication in which the input error was made, if the automated message system does not provide the person with an opportunity to correct the error. A person cannot withdraw the error unless he notifies the other party of the error as soon as possible and has not used or received any material benefit or value from the goods or services received from the other party.

### PART III

#### SECURE ELECTRONIC RECORDS AND SIGNATURES

Part III provides for the circumstances under which electronic records and signatures are to be treated as secure and the rebuttable presumptions that apply to secure electronic records and secure electronic signatures.

Clause 17 provides that an electronic record is to be treated as a secure electronic record from a specific point in time to the time it is verified through the proper application of a specified security procedure or a commercially reasonable security procedure not to have been altered from such specific point in time.

Clause 18 provides that an electronic signature is to be treated as a secure electronic signature if it can be verified that it was, at the time it was made, unique to the person using it, capable of identifying such person, created under the sole control of the person using it, and linked to the record in a manner such that if the record is changed the electronic signature would be invalid. The verification is through the application of a specified security procedure or a commercially reasonable security procedure agreed to by the parties.

Clause 19 provides for a rebuttable presumption that a secure electronic record has not been altered since the specific point in time to which the secure status relates. The clause also provides a rebuttable presumption that the secure electronic signature is the signature of the person to whom it correlates and it was affixed by him with the intention of signing or approving the record. A “secure electronic record” is defined in clause 2 as an electronic record treated as such by virtue of clause 17(1) or any other provision of the Bill. A “secure electronic signature” is defined in clause 2 as an electronic signature treated as such by virtue of clause 18 or any other provision of the Bill.

## PART IV

### REGULATION OF SPECIFIED SECURITY PROCEDURES AND SPECIFIED SECURITY PROCEDURE PROVIDERS

Part IV provides for the regulation of security procedures specified in the Second Schedule (specified security procedures).

Clause 20 defines a “designated person” as a member of a class of specified security procedure providers specified in the Fourth Schedule. Currently only certification authorities are specified in the Fourth Schedule.

Clause 21 provides for provisions applicable to specified security procedures to be set out in the Third Schedule. The provisions from Parts VII to X of the repealed Electronic Transactions Act, relating to the general duties relating to digital signatures, duties of certification authorities and subscribers and regulation of certification authorities have been re-enacted in the Third Schedule. The clause also empowers the Minister, by order published in the *Gazette*, to amend the Second, Third and Fourth Schedules.

Clause 22 confers powers on the Minister to make regulations. The Minister may make regulations, amongst other things, for the regulation, licensing and accreditation of specified security procedure providers and their authorised representatives, to safeguard or maintain the effectiveness and efficiency of the common security infrastructure for secure electronic signatures and the authentication of electronic records and to ensure the compliance of the common security infrastructure with Singapore’s international obligations.

Clause 23 empowers the Controller to give directions by way of notice to a designated person or any officer, employee or authorised representative of the designated person to take such measures or stop carrying on such activities if they are necessary to ensure compliance with the provisions of the Part, or to co-operate with other designated persons or public agencies as the Controller thinks necessary in the case of a public emergency. A certificate signed by the Minister will be conclusive evidence as to the existence of a public emergency for those purposes.

Clause 24 empowers the Controller or an authorised officer to investigate the activities of a designated person (that is, a security procedure provider specified in the Fourth Schedule), or any officer, employee or authorised representative of a designated person, in relation to their compliance with the Part, and to require the production of documents and data for those purposes.

## PART V

### USE OF ELECTRONIC RECORDS AND SIGNATURES BY PUBLIC AGENCIES

Clause 25 empowers a public agency to accept in electronic form the filing of documents, the provision of information, the creation or retention of documents, the

provision or retention of originals, the issuance of permits and payments. It can do so notwithstanding that there are provisions to the contrary in the legislation that provides for such transactions. It is also clarified that various requirements of written law are satisfied by an electronic record specified by the public agency which is created, transmitted, retained or issued (as the case may be) in the manner specified by the public agency. The clause also allows the public agency to specify the conditions and procedures for such transactions in electronic form. The clause by itself will not compel the public agency to a transaction in electronic form if it does not wish to do so.

## PART VI

### LIABILITY OF NETWORK SERVICE PROVIDERS

Clause 26 provides that a network service provider is not subject to civil or criminal liability for third-party material in the form of electronic records to which the provider merely provides access. The protection under the clause will not apply if the provider does something more than merely providing access to the third-party material. The clause, however, will not affect the obligations of a network service provider as such under any licensing or other regulatory regime established under any written law or under the Copyright Act (Cap. 63) in respect of the infringement of copyright or the unauthorised use of any performance. The clause will also not affect any obligation founded on contract or any obligation imposed under any written law or by a court to remove, block or deny access to any material.

## PART VII

### GENERAL

Part VII provides for the appointment of a Controller for the purposes of the Bill and other general and miscellaneous matters.

Clause 27 provides for the appointment of the Controller, the Deputy and Assistant Controllers and other officers and the delegation of the powers and duties of the Controller.

Clause 28 provides for confidentiality where information has been obtained in the performance of duties or exercise of powers under the Bill.

Clause 29 empowers the Controller or an authorised officer to have access to any computer or data which is reasonably suspected to have been in use in connection with any offence under the Bill.

Clause 30 empowers the Controller or an authorised officer to require the production of identification documents for the purposes of the execution of the Bill and to make necessary inquiries to ascertain whether the provisions of the Bill or any regulations made thereunder have been complied with.

Clause 31 makes it an offence for any person to obstruct the Controller or any authorised officer in the performance of his functions under the Bill.

Clause 32 relates to offences by bodies corporate.

Clause 33 provides for a general maximum penalty of \$20,000 fine or 6 months imprisonment or both where no penalty is expressly provided for.

Clause 34 provides that no prosecution may be instituted except by or with the consent of the Public Prosecutor.

Clause 35 provides that a District Court will have jurisdiction over all offences under the Bill and power to impose the full punishment provided for in the Bill.

Clause 36 empowers the Controller to compound prescribed offences by collecting a sum not exceeding one half of the amount of the maximum fine that is prescribed for the offence or \$5,000, whichever is the lower.

Clause 37 empowers the Minister to exempt any person or class of persons from the provisions of the Bill.

Clause 38 provides a general power for the Minister to make regulations.

Clause 39 repeals the Electronic Transactions Act (Cap. 88) and provides for transitional provisions. The Bill will apply to all acts or transactions done in relation to an electronic record made on or after the commencement of the Bill. If, immediately before the commencement of the Bill, any electronic signature or record that has been treated as having satisfied a requirement of law by virtue of section 8, 9 or 15 of the repealed Electronic Transactions Act, the Bill will not affect that treatment of the electronic signature or record.

The First Schedule, which relates to clause 4, specifies the matters to which certain provisions of the Bill do not apply.

The Second Schedule specifies the specified security procedures as defined in clause 2(1). Currently only digital signatures are so specified.

The Third Schedule makes provisions relating to specified security procedures which are specified in the Second Schedule.

The Fourth Schedule specifies the designated persons as defined in clause 20(1) and referred to in clauses 23 and 24.

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**TABLE OF DERIVATIONS**

| Electronic Transactions Bill 2010 |               | UNCITRAL Model Law on Electronic Commerce | United Nations Convention on the Use of Electronic Communications in International Contracts | Electronic Transactions Act (Cap. 88, 1999 Ed.) | Others   |
|-----------------------------------|---------------|---|--|---|--|
| <i>Section Heading</i>            | <i>Clause</i> | <i>Article</i>                            | <i>Article</i>   | <i>Section</i>                                  |  |
| PRELIMINARY                       | PART I        |   |  |   |  |
| Short title and commencement      | 1             | —   | —  | —   | —  |
| Interpretation                    | 2(1)          |   |  |   |  |
| “addressee”                       |               | —   | 4(e)   | —   | —  |
| “authorised officer”              |               | —   | —  | 2   | —  |
| “automated message system”        |               | —   | 4(g)   | —   | —  |
| “communication”                   |               | —   | 4(a)   | —   | —  |
| “Controller”                      |               | —   | —  | 2   | —  |
| “electronic”                      |               | —   | —  | —   | s 106(2) of US Electronic Signatures in Global and National Commerce Act |
| “electronic communication”        |               | —   | 4(b)   | —   | —  |
| “electronic record”               |               | —   | —  | 2   | —  |
| “information”                     |               | —   | —  | 2   | —  |
| “information system”              |               | —   | 4(f)   | —   | —  |
| “originator”                      |               | —   | 4(d)   | —   | —  |
| “public agency”                   |               | —   | —  | —   | —  |
| “record”                          |               | —   | —  | 2   | —  |
| “rule of law”                     |               | —   | —  | 2   | —  |

| <b>Electronic Transactions<br/>Bill 2010</b> |               | <b>UNCITRAL<br/>Model Law<br/>on<br/>Electronic<br/>Commerce</b> | <b>United Nations<br/>Convention on the<br/>Use of Electronic<br/>Communications in<br/>International<br/>Contracts</b> | <b>Electronic<br/>Transactions<br/>Act (Cap. 88,<br/>1999 Ed.)</b> | <b>Others</b> |
|--|---------------|--|---|--|---------------|
| <i>Section Heading</i>                       | <i>Clause</i> | <i>Article</i>   | <i>Article</i>  | <i>Section</i>   |               |
| “secure electronic record”                   |               | —  | —   | 18(4)  | —             |
| “secure electronic signature”                |               | —  | —   | 18(4)  | —             |
| “security procedure”                         |               | —  | —   | 2  | —             |
| “signed” or “signature”                      |               | —  | 9(3)(a)   | —  | —             |
| “specified security procedure”               |               | —  | —   | —  | —             |
| “specified security procedure provider”      |               | —  | —   | —  | —             |
|  | (2)           | —  | 4(h) and 6(3)   | —  | —             |
|  | (3)(a)        | —  | 6(1)  | —  | —             |
|  | (3)(b)        | —  | 6(2)  | —  | —             |
|  | (3)(c)        | —  | 6(4)  | —  | —             |
|  | (3)(d)        | —  | 6(5)  | —  | —             |
|  | (4)           | —  | —   | —  | —             |
| Purposes and construction                    | 3             | —  | —   | 3  | —             |
| Excluded matters                             | 4(1)          | —  | —   | 4  | —             |
|  | (2)           | —  | —   | —  | —             |
| Party autonomy                               | 5(1)          | —  | 8(2)  | 5  | —             |
|  | (2)           | —  | —   | —  | —             |
|  | (3)           | —  | 3   | —  | —             |



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|---|------------------|--|---|--|---------------|
| <i>Section Heading</i>                                  | <i>Clause</i>    | <i>Article</i>                                   | <i>Article</i>  | <i>Section</i>   |               |
| ELECTRONIC RECORDS, SIGNATURES AND CONTRACTS            | PART II          |  |   |  |               |
| Legal recognition of electronic records                 | 6                | 5  | 8   | 6  | —             |
| Requirement for writing                                 | 7                | 6  | 9(2)  | 7  | —             |
| Requirement for signature                               | 8                | —  | 9(3)  | —  | —             |
| Retention of electronic records                         | 9                | 10   | —   | 9  | —             |
| Provision of originals                                  | 10               | 8  | 9(4) and (5)  | —  | —             |
| Formation and validity of contracts                     | 11               | 11(1)  | 8(1)  | 11   | —             |
| Effectiveness between parties                           | 12               | 12(1)  | —   | 12   | —             |
| Time and place of despatch and receipt                  | 13(1)            | —  | 10(1)   | 15   | —             |
|   | (2), (3) and (4) | —  | 10(2)   | 15   | —             |
|   | (5)              | —  | 10(3)   | 15   | —             |
|   | (6)              | —  | 10(4)   | 15   | —             |
| Invitation to make offer                                | 14               | —  | 11  | —  | —             |
| Use of automated message systems for contract formation | 15               | —  | 12  | —  | —             |

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|--|---------------|--|---|--|---------------|
| <i>Section Heading</i>   | <i>Clause</i> | <i>Article</i>   | <i>Article</i>  | <i>Section</i>   |               |
| Error in electronic communications   | 16(1) and (2) | —  | 14(1)   | —  | —             |
|  | (3)           | —  | 14(2)   | —  | —             |
| SECURE ELECTRONIC RECORDS AND SIGNATURES   | PART III      |  |   |  |               |
| Secure electronic record   | 17            | —  | —   | 16   | —             |
| Secure electronic signature  | 18            | —  | —   | 17   | —             |
| Presumptions relating to secure electronic records and signatures                      | 19            | —  | —   | 18   | —             |
| REGULATION OF SPECIFIED SECURITY PROCEDURES AND SPECIFIED SECURITY PROCEDURE PROVIDERS | PART IV       |  |   |  |               |
| Interpretation of this Part  | 20            | —  | —   | —  | —             |
| Specified security procedures  | 21            | —  | —   | —  | —             |
| Regulation of specified security procedures and specified security procedure providers | 22(1) and (2) | —  | —   | 42 and 46  | —             |
|  | (3)           | —  | —   | 43   | —             |
|  | (4)           | —  | —   | 42(3)  | —             |

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| <i>Section Heading</i>                                      | <i>Clause</i> | <i>Article</i>                                   | <i>Article</i>  | <i>Section</i>   |               |
| Controller may give directions for compliance               | 23            | —  | —   | 51   | —             |
| Power to investigate  | 24            | —  | —   | 52 and 55(a)   | —             |
| USE OF ELECTRONIC RECORDS AND SIGNATURES BY PUBLIC AGENCIES | PART V        |  |   |  |               |
| Acceptance of electronic filing and issue of documents      | 25(1)         | —  | —   | 47(1)  | —             |
|   | (2)           | —  | —   | 47(2)  | —             |
|   | (3) and (4)   | —  | —   | —  | —             |
| LIABILITY OF NETWORK SERVICE PROVIDERS                      | PART VI       |  |   |  |               |
| Liability of network service providers                      | 26            | —  | —   | 10   | —             |
| GENERAL   | PART VII      |  |   |  |               |
| Appointment of Controller and other officers                | 27            | —  | —   | 41 and 50  | —             |
|   |               |  |   |  |               |

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|---|-----------------------|--|---|--|---|
| <i>Section Heading</i>                          | <i>Clause</i>         | <i>Article</i>                                   | <i>Article</i>  | <i>Section</i>   |   |
| Obligation of confidentiality                   | 28                    | —  | —   | 48   | s 34 of Accounting and Corporate Regulatory Authority Act (Cap. 2A) |
| Access to computers and data                    | 29                    | —  | —   | 53   | —   |
| Production of documents, etc.                   | 30                    | —  | —   | 55   | —   |
| Obstruction of Controller or authorised officer | 31                    | —  | —   | 54   | —   |
| Offences by bodies corporate, etc.              | 32                    | —  | —   | 49   | —   |
| General penalties                               | 33                    | —  | —   | 56   | —   |
| Consent of Public Prosecutor                    | 34                    | —  | —   | 57   | —   |
| Jurisdiction of court                           | 35                    | —  | —   | 58   | —   |
| Composition of offences                         | 36                    | —  | —   | 59   | —   |
| Power to exempt                                 | 37                    | —  | —   | 60   | —   |
| Regulations                                     | 38                    | —  | —   | 61   | —   |
| Repeal and transitional provisions              | 39                    | —  | —   | —  | —   |
| <b>MATTERS EXCLUDED BY SECTION 4</b>            | <b>FIRST SCHEDULE</b> | —  | 2(2)  | —  | —   |

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| <i>Section Heading</i>                   | <i>Clause</i>   | <i>Article</i>                                   | <i>Article</i>  | <i>Section</i>   |               |
| SPECIFIED SECURITY PROCEDURES            | SECOND SCHEDULE | —  | —   | —  | —             |
| DIGITAL SIGNATURES                       | THIRD SCHEDULE  | —  | —   | 2, 19 to 40, 41(5), 44 and 45                          | —             |
| DESIGNATED PERSONS                       | FOURTH SCHEDULE | —  | —   | —  | —             |