

Feedback on the Amendments to be made to the Electronic Transactions Act

From:

Maybank Singapore Limited

Contact person: Katie Anne Chew, Head Legal, CFS & Corporate

Contact number: 6550 7475

Feedback on the amendments to be made to the Electronic Transactions Act (ETA) **(CAP.88) (“ETA”)**

Summary:

- In general, we view the proposed amendments to the ETA as a positive move for Singapore, not only to be in line with international standards but also as a measure to prevent fraud and make life easier for individuals when dealing with certain legal transactions, which are often very daunting.
- With regards to the sunrise period of 2021 and the proposed commencement of the amendments in 2023, we feel that the timeline given is very tight, taking into consideration the review of current policies, procedures and laws, and as a financial institution taking into consideration the cost and time related to IT enhancements.

Documents:

- With regards to the documents which will be removed from the exclusion list stated in the ETA we have the following comments:
 - Wills – if the requirements under the Wills Act which protect individuals can be maintained, then we are of the view that Wills should be removed from the exclusion act. However, as the creation of a Will is personal, never standard, can be amended and requires the presence of 2 witnesses there may be additional constraints that need to be addressed. The Wills Act, ETA and certification process would need to address this.
 - Negotiable Instruments, Documents of Title, Bills of Lading and other transferable documents or instruments – For the prevention of fraud and enhancement of transfer of documents which are legally binding, we are agreeable that these documents should be removed from the exclusions list. However, the main issue here is the enforcement of such documents for cross border transactions where the particular laws of a country may not recognise the ETA or MLETR or may not be able to access the relevant system that transmits the documents.
 - Powers of Attorney – we agree that there is a potential of abuse with regards to POAs that are signed by individuals and concern personal matters e.g. undue influence by family members. How to mitigate this risk is very much dependent on how access to the system creating the electronic POA is monitored. Can this type of access be controlled by an independent third party such as a lawyer? If this cannot be monitored we agree that POAs between sophisticated transactions/parties should be removed from the exclusion list.
 - Lasting Powers of Attorney – given that LPAs are generally standardised documents we are of the view that they should be removed from the exclusion list. Provided that a person’s rights under the Mental Incapacity Act should not be affected by the exclusion e.g. a medical certificate from a doctor would still need to be produced.
 - Indentures & Trusts – our thoughts with regards to the declarations of trusts in relations to immovable property are the same as those in relation to Power of Attorneys stated above. Provided that the relevant laws for Indentures and

testamentary trusts can be adhered to, then we are agreeable for their removal from the exclusion list.

- Contracts for the sale or other disposition of immovable property – we agree to the removal of this type of contract from exclusion list provided that digital signatures can be used. If this is agreed upon then the relevant legislation would need to be amended.
- Conveyance of Immovable Property and/or transfers – agree that this should be removed from the exclusion list.

Systems/ others:

- With regards to the use of DLT, smart contracts and biometrics we are the view that is should be made clear that these systems are captured under the ETA. It may not need an amendment to the ETA but a notice or announcement due to the risk involved in reliance on these systems. Further education is needed on these systems and the risks involved to enable institutions to adopt their use.
- We are agreeable for the current CA accreditation framework to remain. We require more information on the International Audit Frameworks to comment on its use.

Conclusion:

- The feedback contained herein is based on the premise that there is a robust system in place with the necessary governance to ensure that both individuals and institutions are fully protected under the current laws.
- We require further clarification on the timeline for this project/amendments, and on who can used the services e.g. is it possible for a bank to provide Will writing services using a system certified under the Act.