

- 1. Do you have any comments on the proposal to move technology specific details in the Electronic Transactions Act (ETA) to Electronic Transactions (Certification Authority) Regulations (ETR)?**

Answer:

No we do not have any comments for same reasons as set out in Part 2.6.3 and 2.6.4.

- 2. Do you have any comments on the proposal to replace the current “licensing” approach with the “accreditation” framework?**

Answer:

No we do not have any comments. The licensing regime that Singapore adopts is a voluntary scheme. Therefore, since it is not mandatory for Certification Authority (“CA”) in Singapore to be licensed, we do not have an issue replacing the current “licensing” approach with the “accreditation” framework to better represent the voluntary nature of our framework.

- 3. Do you have any comments on the proposed amendments to the financial criteria and fees for CA accreditation?**

Answer:

A1: The requirement of bankers guarantee should not be removed. Instead of removing the requirement for \$1 million bankers guarantee, we propose that the bankers guarantee should be reduced instead (for example, \$500,000). We feel that this provides a sense of security to the users of CA when engaging the services of a CA.

A2: We do not have an issue with the removal of insurance requirement in We feel that this should be a commercial decision rather than being imposed by law. However, we believe that it is a good mitigation risk that every CA are encouraged to take an insurance coverage for errors and omissions on part of its officers or employees as these risks are inherent in every CA.

A3: The minimum requirement of not less than \$5million of current paid up capital should not be removed. The requirement of the paid up capital is needed to ensure that CA has sufficient funds to continue its operation. However, this may be a barrier to entry for companies contemplating accreditation in Singapore, as they may not have sufficient paid up capital. We are of the opinion that the minimum requirement should be reduced.

A4: We have no issue on reduction in total fees payable by CA from \$2000 for first application for a CA accreditation and \$1000 subsequently for every two years of renewal and accreditation.

- 4. Do you have any comments on the propose increase in accreditation duration from 1 year to 2 years?**

Answer:

No issue on proposal to increase the accreditation duration from 1 year to 2 years as it would be more cost effective for the CA and there would be less

administrative work to be carried out by the Controller to conduct the security audit annually. However, we feel that the proposed accreditation from 1 to 2 years should be on case by case basis. If the Controller feels that the license should only be granted for 1 year, then it must make it known to the CA.

**5. Do you have any comments on the proposed amendments to limit the audit requirement to relevant security guidelines?**

Answer:

No. We feel that a comprehensive audit requirement is not required as long as the guidelines have been complied with.

**6. Is it necessary to clarify the meaning of “network service provider”. Do you agree with the proposed definition of “network service provider”?**

Answer:

Yes, it is necessary to provide the meaning of "network service provider" to ensure that only the classes of "network service provider" as defined in the ETA are protected.

We do not have an issue with the proposed definition.

**7. Do you agree with the proposed deletion of the words “to which he merely provide access” in section 10(1) of the ETA?**

Answer:

We do not have any issues with the proposed deletion of “to which he merely provide access”. We understand that this may raise issues as to whether section 10 may be applied too widely (ie: it is no longer confined to "providing access to material for automatic or temporary storage of materials"). However, we believe that since section 10 is only meant to cover “third party material” (on the assumption that there is no effective/direct control on the third party materials), we do not think that this section may be applied too widely.

**8. If section 10 of the ETA is amended as proposed in 3.4.8 and 3.4.14, do you think any further safeguards are necessary? In particular, would the protection under section 10 be too wide? If yes, please elaborate with specific reference to the kinds of liability from which network service provider should not be exempted.**

Answer:

Section 10 protects the network service provider from civil and criminal liability from third party material. If section 10 is amended as proposed, we believe that the word “third party material” should be defined to ensure that only those who have no control over the third party information are protected. We are of the opinion that as long as the network service provider has some/little control over the third party material, then they should not be protected under section 10.

For example: A shop retailer that offers "shop on line" should be allowed to rely on this clause as they do not have effective control over the information provided by the manufacturer. However, for "in-house" brands, we believe that the section 10 protection should not be accorded to the retailers who offers shop on line service for their own in-house brands as we believe that retailers should have sufficient knowledge on the credibility of the manufacturers of their in-house brands. We believe that they should take an active role in ensuring that there are no misrepresentations on the products being offered on line to their customers.

**9. Should the immunity regime for service providers under section 10 of the ETA be changed?**

Answer:

Yes but only to the extent to which the service providers have no direct control over third party materials.

**10. Do you have any comments on the proposed amendments to section 9 of the ETA in Annex B?**

Answer:

No

**11. Do you have any comments on the proposed amendments to section 47 of the ETA in Annex B?**

Answer:

No.

**12. Should Singapore adopt a single provision on electronic originals or provide specifically for different situations in which electronic communications may be used as a function equivalent of paper or non-electronic forms?**

Answer:

We feel that Singapore should adopt the single provision on electronic originals

**13. Should consent to accept electronic originals be required? In this respect, should there be any distinction between Government agencies and private persons or entities, and if yes, what differences should there be? For example, should Government agencies be presumed to accept electronic originals unless they have opted out of doing so, as proposed in section 9A(4) in Annex B? Would your views differ, if instead of a single provision on electronic originals, there are specific provisions on the use of electronic communications in different situations?**

Answer:

We believe that no consent to accept electronic originals is needed.

There should not be any distinction between Government agencies and private persons or entities.

Yes, government agencies are presumed to have accepted the electronic originals unless they have opted out of doing so as proposed in section 9A (4) of the ETA.

No, our views would not differ even though specific provisions are used in different situations. Government agencies are presumed to have accepted electronic originals unless they have opted out of doing so as proposed in section 9A (4) of the ETA.

- 14. Proposed section 9 and 9A of the ETA require compliance with any additional technical requirements as to forms and procedure that Government agencies may have in relation to the acceptance of electronic originals. Should there be express requirements to comply with such additional technical requirements in the case where the intended recipient of electronic originals is not Government agency? Would your views differ if, instead of a single provision on electronic originals, there are specific provisions on the use of electronic communications in different situations?**

Answer:

Yes we feel express requirement is needed where intended recipient of electronic originals is not Government agency. This is to ensure that they are aware of the additional technical requirements and they have the capability to retain the document in electronic records with the additional technical requirements imposed on them.

No our views remain.

- 15. Do you agree that the definition of an electronic signature should not require such a signature to fulfill both an identification as well as an approval function?**

Answer:

We do not agree. "Approval" should be read together with "electronic communication", which is defined in the Convention as "any 'statement, declaration, demand, notice or request, including an offer and acceptance of an offer, that the parties are required to make in connection with the formation or performance of a contract' that the parties make by means of data messages". The "communication" made by a witness to a document is that he has acted as a witness. In order to fulfil his function as such, a witness would have to "approve" the communication that he is a witness and he would do so by appending his signature to the document. The same reasoning applies to a notary or commissioner of oath who would have to

“approve” the communication made by him to the effect that he had notarised a document. For the above reason, we take a differing view to that which Singapore had submitted to the UNCITRAL Secretariat requesting UNCITRAL to consider amending Art 9(3)(a) to recognize that electronic signatures are sometimes requires by law only for the purpose of identifying the signor and associating the information with the signor, but not necessarily to indicate the signor’s “approval” of the information contained in the electronic communication. See Annex C of the Consultation Paper.

- 16. Do you agree that a general provision for the functional equivalence of electronic signatures to handwritten signatures (e.g. section 8) should not contain any reliability requirement?**

Answer:

Yes, we agree. For the same reasons as those set out in Annex C of the Consultation Paper.

- 17. Should any laws imposing a signature requirement be clarified by prescribing the requirements as to reliability that should apply to electronic signatures? If yes, please state the legal requirement (e.g. Civil Law Act, section 6) and describe the standard that should be required of electronic signatures in order to satisfy that legal requirement.**

Answer:

Yes. The standard that should be required of such electronic signatures should, at the minimum, fulfil the requirements before an electronic signature can be treated as a secure electronic signature under Section 17 of the ETA.

- 18. What difficulties or benefits do you foresee if the provisions of article 9(4) and (5) of the draft convention (relating to originals) are adopted in the ETA?**

Answer:

Adopting these provisions would, as pointed out by one of the respondents to the Stage I consultation paper, be useful in promoting the development and acceptance of technology for the use of electronic originals. In addition, such provisions would be useful for the purposes of civil procedure where contents of documents have to be proved by primary evidence – see Sections 66 of the Evidence Act.

- 19. Do you have any comments on proposed section 9A in Annex B? Do you agree with the criteria for acceptance of electronic originals in proposed section 9A(1) and (2) in Annex B?**

Answer:

The additional requirement that the electronic originals have to be capable of being retained by the person to whom the originals is provided (see Section 9A(1)(b)) may pose difficulties where singularity of the originals is an issue. We may wish to consider excluding letters of credit and bank guarantees from the ambit of the provision of electronic originals. This would also bring the proposed Section 9A in line with the proposed Art 9(6) of the Convention.

**20. What difficulties or benefits do you foresee if the provisions of article 10 of the draft Convention (relating to time and place of dispatch and receipt of electronic communications) are adopted in the ETA?**

Answer:

Benefits

- (a) The existing Section 15 of the ETA currently does not address the situation where the information does not leave the information system of the originator, e.g. where the information is posted on a website operated by the originator. Art 10 would address that situation.
- (b) Overall, as pointed out at 5.12.14 of the Consultation Paper, Art 10 would provide greater certainty as to the time and place of dispatch and receipt of electronic communications.

Difficulties

- (a) The terms “information system” and “electronic address” are not defined in the ETA. Although we can incorporate the definition of “information system” from the definition in the draft Convention, the Working Group for the draft Convention has decided not to include a definition of “electronic address” in the Convention, preferring instead to leave the concept to be elucidated in any explanatory notes or official commentary to the draft Convention. Wholesale adoption of Art 10 into the ETA may therefore require us to keep referring to explanatory notes or official commentary to the draft Convention in order to interpret the terms used therein.

Miscellaneous

Art 10 of the Convention refers to “place of business” of the originator. The definition of “place of business”, which is provided in Art 6 of the Convention, is wider than that currently provided for in Section 15(5) of the ETA. As such, if Art 10 of the Convention is to be adopted into the ETA, Art 6 would have to be adopted as well.

**21. What difficulties or benefits do you foresee if the provisions of article 11 of the draft Convention (relating to invitation to make offers) are adopted in the ETA?**

Answer:

The adoption of the provisions of Art 11 would not make a difference to the common law applicable to contracts in Singapore.

Benefits

- (a) Adoption of Art 11 would encourage people to specifically state their intention as to whether or not they wish to be bound by their proposals.

Difficulties

- (a) Some phrases used in Art 11, e.g. “proposal to conclude a contract” and “generally accessible” are not defined and may give rise to difficulties in interpreting the provision.

**22. What difficulties or benefits do you foresee if the provisions of article 12 of the draft Convention (relating to automated message systems) are adopted in the ETA?**

Answer:

The benefit of adopting Art 12 into the ETA is that the position with regards to contracts formed with automated message systems will be clarified.

**23. What difficulties or benefits do you foresee if the provisions of article 14 of the Convention (relating to Error in Electronic Communication) are adopted in the ETA?**

Answer:

Benefits

The benefits have been elucidated in 5.15.5 of the Consultation Paper.

Difficulties:

Difficulties may arise in interpreting, proving or disproving “input error”. Reference would have to be made to explanatory notes or official commentary to the draft Convention to explain the notion of “input error” and other basic concepts underlying Art 14. (See page 45 of A/CN.9/571)

**24. What exclusions from the applicability of the Convention do you propose in the context of Singapore? Please specify legislative provisions affected where relevant. (See paragraphs 5.16.9 to 5.16.11)**

Answer: The legislative provisions that would be affected would be those relating to the creation or execution of a will, the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts, any contract for the sale or other disposition of immovable property, or any interest in such property and the conveyance of immovable property or the transfer or any interest in immovable property.

**25. Do you agree that Singapore should not adopt any of the limitations in article 18(1)? (See paragraph 5.16.12)**

Answer: Yes. Restricting the applicability of the Convention may have an adverse effect on Singapore’s competitive edge in the emerging e-commerce market.

- 26. Should sections 13, 14 and 15 in Part IV of the ETA be allowed to apply to non-contractual transactions? (See paragraphs 5.17.1 to 5.17.3)**

Answer: Yes.

- 27. Do you have any comments on whether any of the provisions of the Convention should apply to non-contractual transactions? (See paragraphs 5.17.4 to 5.17.7)**

Answer: No.