

Review of Electronic Transactions Act Stage II: Exclusions under Section 4 of the ETA

Dear Sir/Madam

Please see attached submission from DBS. Let me know if you have any queries or comments.

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Response From DBS Bank :

**Public Consultation of Joint IDA-AGC Review of Electronic Transactions Act Stage II: Exclusions under Section 4 of the ETA
4 August 2004**

Infocomm Development Authority - Attorney-General's Chambers Questions	Electronic Transactions Act (ETA) 1998	DBS' Responses
<p><u>Q1</u> Do you agree that electronic wills should continue to be excluded from the application of the ETA? If you think electronic wills should be recognised, please justify and suggest how they may work in practice.</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: a) the creation or execution of a will;....</p>	<p>From a general banking point of view, banks are not really concerned with wills. If a customer dies, the Bank will freeze the account until the estate obtains probate (where there is a will) or letters of administration (where there is no will). The Bank looks only at the order of probate or letters of administration, and does not really need to know the contents of the will.</p>
<p><u>Q2</u> Should the Wills Act be amended to facilitate the use of electronic wills in exceptional cases? If yes, please suggest what circumstances such a provision may be used in and the amendments that should be made.</p>	<p>Not applicable.</p>	<p>As per Question 1.</p>
<p><u>Q3</u> Do you agree that negotiable instruments should continue to be excluded from the application of the ETA?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: b) Negotiable instruments;....</p>	<p>Yes, negotiable instruments should continue to be excluded as it is generally accepted that because the Bills of Exchange Act includes a number of paper-based concepts, it requires bills of exchange to be in paper form.</p> <p>Additionally, in practice, most cheques, one of the most commonly used forms of bills of exchange, are not negotiable. Where negotiable instruments need to be in electronic form, there are other instruments available which are more secure. Having electronic checks, for example, will also affect negotiability.</p>
<p><u>Q4</u> Should the creation, performance or enforcement of an indenture continue to be excluded from the application of the ETA?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) The creation, performance and enforcement of an indenture....</p>	<p>This depends on the transaction involved. However, land transactions should be excluded.</p>

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<p><u>Q5</u> Should Singapore adopt a provision in the ETA to allow secure electronic signatures (or only secure digital signatures) to satisfy the requirement for sealing?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) The creation, performance and enforcement of an indenture....</p>	<p>This depends on the transaction involved. Land transactions should be excluded.</p> <p>In addition, the Bank often requires security documents signed by customers (e.g. Charge over FD and guarantees) to be signed under seal. The Bank is also supposed to maintain copies of these documents to satisfy document retention requirements. How will the Bank maintain copies of documents that have been signed digitally under seal?</p>
<p><u>Q6</u> If you answered yes to Q.5, should any class of transactions be excluded from the provision allowing electronic signatures (or secure digital signatures) to satisfy the requirement for sealing e.g. land transactions?</p>	<p>Not applicable.</p>	<p>Land transactions should be excluded as Sections 6 and 7 of the Civil Law Act impose legal requirements for writing and signature in the case of certain land transactions.</p>
<p><u>Q7</u> Should the ETA enable a secure electronic signature (or secure digital signature) to satisfy the attestation requirement, i.e. signing of a document by its maker using such a signature need not be witnessed by another person?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) The creation, performance and enforcement of an indenture....</p>	<p>This depends on the transaction involved. Land transactions and wills should be excluded.</p>
<p><u>Q8</u> Should the ETA provide that a legal requirement for a signature or seal to be witnessed is met by the witness' electronic signature?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) The creation, performance and enforcement of an indenture....</p>	<p>This depends on the transaction involved. Land transactions and wills should be excluded.</p>

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<p><u>Q9</u> If you answered yes to Q.7 or 13, should any class of transactions be excluded from the provision e.g. land transactions?</p>	<p>Not applicable.</p>	<p>Land transactions should be excluded as Sections 6 and 7 of the Civil Law Act impose legal requirements for writing and signature in the case of certain land transactions.</p>
<p><u>Q10</u> When should an electronic indenture take effect?</p>	<p>Not applicable.</p>	<p>An electronic indenture should take effect on the date and at the time specified by the parties.</p>
<p><u>Q11</u> What should be the requirements for withdrawal from or amendment of an electronic indenture?</p>	<p>Not applicable.</p>	<p>There should be the same level of stringent requirements as per the creation of the electronic indenture.</p>
<p><u>Q12</u> Do you agree that section 4 should exclude testamentary trusts i.e. the ETA should not apply to testamentary trusts?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>Yes, section 4 should exclude testamentary trusts to be consistent with our position on wills.</p>
<p><u>Q13</u> Do you agree that section 4 should exclude trusts in relation to land i.e. the ETA should not apply to trusts for land?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>Yes, section 4 should exclude trusts in relation to land to protect unsophisticated homeowners from unwittingly parting with their homes.</p>
<p><u>Q14</u> Do you agree that Parts II and IV of the ETA should be allowed to apply to implied trusts, in addition to constructive and resulting trusts (which are currently allowed)?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>An implied trust is a trust arising by operation of law when the circumstances of a transaction imply the creation of a trust that is not expressly created by the parties and especially when a trust is necessary to avoid an inequitable result or to prevent fraud. For this reason, Parts II and IV of the ETA should be allowed to apply to implied trusts.</p>

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<p><u>Q15</u> Do you agree that Parts II and IV of the ETA should be allowed to apply to trusts (other than testamentary trusts and trusts in relation to land) created electronically? If the ETA is amended to enable non-testamentary trusts to be made electronically, what special requirements, if any, should apply to the creation of such trusts?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>We would think that express private trusts (meaning trusts where a settlor draws up a formal trust deed for the benefit of selected individuals) should probably be excluded. Such trusts are usually done as part of estate planning and usually involve substantial assets. Furthermore, the trust is usually intended to endure for a considerable period of time (raising problems of document retention). These factors probably make it desirable for such trust instruments to be in writing.</p>
<p><u>Q16</u> Should electronic powers of attorney continue to be excluded from the application of the ETA? If you think electronic powers of attorney should be permitted, please explain why they should be permitted and how they may work in practice.</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>The Bank both grants powers of attorney (PAs) itself and acts on powers of attorney issued by customers.</p> <p>From the Bank's perspective, the use of electronic signatures is not practical for PAs that need to be lodged with third party bodies such as the Supreme Court and the Land Titles Registry, unless these bodies overhaul their systems to allow deposition of PAs that are signed electronically.</p> <p>In the case of PAs issued by customers, the Bank is normally concerned about issues of authentication and verification. Digital signatures would presumably take care of the problem of verification, but it is still difficult to see how this will work in practice. How will a customer "send" an electronic PA to the Bank? In any case, the Bank still requires the attorney to show up in person so that the Bank can verify his identity etc, in which case the attorney might as well produce the original hard copy PA.</p> <p>Yes, PAs can be included but we see little practical value for the reasons given above.</p>

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<p><u>Q17</u> Do you agree that powers of attorney used in relation to the disposition of land should continue to be excluded from the application of the ETA?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: c) ...declaration of trust or power of attorney with the exception of constructive and resulting trusts;....</p>	<p>Yes, powers of attorney used in relation to the disposition of land should continue to be excluded as the high value of such transactions justifies the extra precautionary measures to be taken.</p>
<p><u>Q18</u> Should any classes of persons be excluded from the operation of section 4(1)(d) or (e) of the ETA i.e. to enable them to enter electronic contracts for the sale or other disposition of land, or any interest in land? If yes, please specify in relation to which kinds of transactions, and propose any additional safeguards that may be necessary.</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: d) Any contract for the sale or other disposition of immovable property, or any interest in such property; e) The conveyance of immovable property or the transfer of any interest in immovable property;....</p>	<p>No, as technological obsolescence is also a concern for corporations. Additionally, there should be a limit on the value of the transaction to protect particularly sensitive and high value transactions from being fraudulently transacted or forged.</p>
<p><u>Q19</u> Should any classes of land transactions be excluded from the operation of section 4(1)(d) or (e) of the ETA i.e. to enable such transactions to be carried out electronically? If yes, please specify any additional safeguards that may be necessary.</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: d) Any contract for the sale or other disposition of immovable property, or any interest in such property; e) The conveyance of immovable property or the transfer of any interest in immovable property;....</p>	<p>No, as the high value of land transactions justifies the extra precautionary measures to be taken.</p>
<p><u>Q20</u> Do you agree that electronic documents of title should continue to be excluded from the application of Parts II and IV of the ETA?</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: f) Documents of title.</p>	<p>Yes, electronic documents of title should continue to be excluded, as at present, there is a lack of international consensus on the elements of an electronic bill of lading, which is the most common type of document of title.</p>

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<p><u>Q21</u> Should Singapore enact any legislation to facilitate the use of electronic documents of title? If yes, please specify what kinds of documents of title, how they may work in practice and what legislative provisions will be required.</p>	<p><u>Section 4, Subsection 1</u> Parts II and IV shall not apply to any rule of law requiring writing or signatures in any of the following matters: f) Documents of title.</p>	<p>No, Singapore should not enact any legislation to facilitate the use of electronic documents of title yet as at present, there is a lack of international consensus on the elements of an electronic bill of lading, which is the most common type of document of title.</p>
<p><u>Q22</u> Should Singapore enact legislation based on chapter 1 of Part 2 of the UN Model Law on Electronic Commerce relating to documents used in carriage of goods?</p>	<p>Not applicable.</p>	<p>No, Singapore should not enact any legislation yet as at present, there is a lack of international consensus on the elements of an electronic bill of lading, which is the most common type of document of title.</p>
<p><u>Q23</u> Should any class of parties or transactions be excluded from the operation of section 4 of the ETA? If yes, please explain.</p>	<p>Not applicable.</p>	<p>Our view is that the list of exclusions should remain.</p>
<p><u>Q24</u> Should any transactions be added to the exclusions under section 4 of the ETA? If yes, please explain.</p>	<p>Not applicable.</p>	<p>Our view is that the list of exclusions should remain.</p>
<p><u>Q25</u> Do the form requirements in any legislation need to be clarified as to whether or not they may be satisfied by electronic means? If yes, please specify and explain the difficulty posed by the provision.</p>	<p>Not applicable.</p>	<p>We would appreciate clarification whether the requirement for "written consent" to disclosure of customer information under the Banking Act can be satisfied through an electronic record. External lawyers appear to be divided on this issue and it would be preferable to clear this up once and for all. This is a perennial issue raised in Internet banking transactions and there is no satisfactory answer.</p>