

## REVIEW OF ELECTRONIC TRANSACTIONS ACT - AN OVERVIEW

1 The Infocomm Development Authority of Singapore and Attorney-General's Chambers are conducting a joint review of the Electronic Transactions Act (ETA) and Electronic Transactions (Certification Authority) Regulations ("CA Regulations"). For this purpose, a public consultation is being carried out in three stages dealing with electronic contracting issues, exclusions from the ETA under section 4 and secure electronic signatures and certification authorities.

2 Stage I of the Public Consultation concerns possible amendments to the ETA relating to **electronic contracting**. The consultation seeks guidance and feedback for the Singapore delegation on issues currently under consideration at the international level by UNCITRAL, in relation to on-going work on a draft Convention on Electronic Contracting by the UNCITRAL Working Group on Electronic Commerce. It also seeks public views on the potential impact of the proposed Convention.

3 The UNCITRAL Convention on Electronic Contracting seeks to harmonise national laws as to how international contracts can be entered into electronically. Work on the Convention is in its final stages. If Singapore accedes to such a Convention, it is expected that the ETA will be amended for consistency with the provisions of the Convention.

4 The Consultation Paper on Electronic Contracting Issues highlights the main changes and issues which might arise from adopting the draft UNCITRAL Convention on Electronic Contracting. It also discusses some other electronic contracting issues that arise apart from the Convention. Briefly, the Paper focuses on the following issues:

- Party Autonomy: Consent to Accept Electronic Communications and Variation by Agreement.
- Recognition of Electronic Signatures
- Formation of Contract: Effectiveness of Electronic Communications and Attribution.
- Time and Place of Despatch and Receipt
- Automated Information Systems
- Other Contract Issues e.g. Incorporation by Reference, Provision of Originals, etc.

5 Stage II of the Public Consultation on Review of the ETA will address **exclusions from the ETA under section 4**. Section 4 excludes the provisions making electronic records the functional equivalent of paper records from applying to any rule of law requiring writing or signature in certain transactions, namely: the creation or execution of a will; negotiable instruments; indentures, certain trusts and powers of attorney; disposition,

conveyance or transfer of immovable property; and documents of title. The consultation paper reviews these exclusions.

6 Stage III of the Public Consultation concerns **secure electronic signatures and certification authorities**. The consultation paper considers whether amendments to the ETA are necessary to accommodate new technologies relating to secure electronic signatures. It also considers amendments to the definition of related terms such as electronic record, electronic signature and digital signature. Views are also sought on approaches to the regulation of certification authorities and related matters, including whether to adopt an accreditation scheme instead of a voluntary licensing scheme and possible approaches to the recognition of foreign certification authorities.

7 The Public Consultation is expected to be completed by the end of 2004. Comments and feedback on any other aspects of electronic transactions legislation are also welcome.