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27 August 2004

LAW REFORM AND REVISION DIVISION
Attorney-General's Chambers
1, Coleman Street
#05-04, The Adelphi
Singapore 179803

Dear Sirs

JOINT IDA-AGC REVIEW OF THE ELECTONIC TRANSACTIONS ACT - STAGE II

Instead of attempting to answer the specific questions raised in the Consultation Paper, we propose to provide a broad response to the exclusions under Section 4.

First, we agree that the exclusions were rightfully framed when the ETA was first put into effect as there were questions relating to the adoption of electronic formats for hitherto paper-based transactions. Not least of these questions relate to the ability of technology to reliably support such electronic formats. However, our view is that with greater public acceptability, technological advances and more importantly, technological standardisation, legislation may now remove the exclusions totally. It is our view that until legislative constraints are removed, the private sector will not be incentivised to create and promote initiatives that may enhance the use of electronic formats.

We will use the case of wills to illustrate. The law currently does not recognise an electronic will. There are electronic will storage service providers and will notification/particulars deposit services, but these provide ancillary services to a paper-based will. As such, the problems associated with a will persists. The problems include the mandatory production of the original, paper-based document, and if the will is challenged, the production of witnesses, handwriting experts and other evidence required to prove the will. There are attendant problems – witnesses' memories fade over time, handwriting experts and judges are fallible.

There are indisputably issues concerning electronic wills. However, our submission is that conventional paper-based wills and electronic wills pose problems of equal, albeit different, magnitude. We believe the problems with electronic will making (described in the Consultation Paper) may be ameliorated.

For example, a will may be digitally signed by a testator and witnesses using their private keys of all individuals. A private entity may established and certified to issue digital certificates. This entity may also act as a depository of electronic wills, and after the will has been created electronically, the testator may deposit the will with this entity. At the time of deposit, certain non-confidential information, similar to the information presently deposited with the Wills Registry (e.g. name of executor/contact person) may also be deposited. When the will needs to be proved in court, the entity, on the instructions of the executor or contact person will send the electronic will to the court allow with the testator's private key in order for the will to be decrypted.

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We admit that such an idea requires further thought and refinement, and raise this suggestion only to support the contention that the benefits of technology (in this illustration, PKI technology) may be harnessed to great advantage. In this illustration, the benefits of non-repudiation, data-integrity authentication may result in less disputes over wills and savings of judicial time and effort.

In summary, our view is that the reasons for the exclusions in Section 4 is undermined by advances in technology, awareness of its and the increasing adoption of universal standards. The exclusion act as a hindrance towards adoption of electronic formats as functional equivalents. We recommend that they be removed and members the public be allowed to use such electronic formats as they deem fit.

Yours faithfully
CRIMSONLOGIC PTE LTD

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