

Our Ref: LS/65/04/CSY/sha

Your Ref: AG/LRRD/2/2004

24 September 2004

Mrs Joyce Chao
State Counsel
Law Reform & Revision Division
Attorney-General's Chambers
1 Coleman Street #10-00
Singapore 179803

Dear *Joyce*

Review of Electronic Transactions Act (ETA) – Exclusions under Section 4 of the ETA

I refer to your email of 21 August 2004 and Ms Adeline Sim's email of 31 August 2004 extending the deadline for submission of comments to 25 September 2004.

I enclose for your consideration the comments from the Law Society's Corporate Practice Committee on the issues raised in the consultation paper entitled "Joint IDA – AGC Review of Electronic Transactions Act Stage II: Exclusions under Section 4 of the ETA".

The Law Society has no objections to our comments being made public on the IDA website.

Please contact me at 65300 235(DID) or via email at <chu_sooi_yoon@lawsoc.org.sg> if you need any further information or clarification.

Yours sincerely



Chu Sooi Yoon (Ms)
Director, Practice Standards

Enc./

c.c. Council
c.c. Corporate Practice Committee



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24 September 2004

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**COMMENTS ON
REVIEW OF ELECTRONIC TRANSACTIONS ACT (ETA) –
EXCLUSIONS UNDER SECTION 4 OF THE ETA**



THE LAW SOCIETY
OF SINGAPORE

Comments On

Review of Electronic Transactions Act (ETA) – Exclusions under Section 4 of the ETA

Q.1	<i>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.</i>
	Yes.
Q.2	<i>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.</i>
	It is conceivable that secure electronic executions of wills can take place under the watchful eye of a solicitor, i.e., electronic wills are only possible via a secure connection within Law Net, and can only be done with digital attestations by a solicitor in his law office.
Q.3	<i>Do you agree that negotiable instruments should continue to be excluded from the application of the ETA?</i>
	Yes. Again this is not a situation where the law races ahead of real world applications. There should be legislation only if there is demand and existing technology for electronic bills of exchange. That said, if millions of dollars can be transacted digitally over the SWIFT network, the digitization of negotiable instruments should not be discouraged.
Q.4	<i>Should the creation, performance or enforcement of an indenture continue to be excluded from the application of the ETA?</i>
	Yes
Q.5	<i>Should Singapore adopt a provision in the ETA to allow secure electronic signatures (or only secure digital signatures) to satisfy the requirements for sealing?</i>
	No. It would be inconsistent to allow electronic signatures for sealing whilst at one hand we do not allow electronic indentures. The impact of this legislation is minimal.
Q.6	<i>If you answered yes to Q.5, should any class of transactions be excluded from the provision allowing electronics signatures (or secure digital signatures) to satisfy the requirement for sealing e.g. land transactions?</i>
	NA
Q.7	<i>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?</i>
	No. We should allow for electronic attestations only if the attested signature can also be electronic.
Q.8	<i>Should the ETA provide that a legal requirement for a signature or seal to be witnessed is met by the witness' electronic signature?</i>

	NA
Q.9	<i>If you answered yes to Q.7 or 13, should any class of transactions be excluded from the provision e.g. land transactions?</i>
	NA
Q.10	<i>When should an electronic indenture take effect?</i>
	NA
Q.11	<i>What should be the requirements for withdrawal from or amendment of an electronic indenture?</i>
	NA
Q.12	<i>Do you agree that section 4 should exclude testamentary trusts i.e. the ETA should not apply to testamentary trusts?</i>
	Yes
Q.13	<i>Do you agree that section 4 should exclude trusts in relation to land i.e. the ETA should not apply to trusts for land?</i>
	Yes
Q.14	<i>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)?</i>
	No
Q.15	<i>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?</i>
	No. Most of the objections against the digitization of signatures for documents arise from the fear of forgery or the inability to verify. The bar should therefore be higher in a trust situation, where a trustee holds property for the benefit of someone else.
Q.16	<i>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.</i>
	Yes. Again powers of attorney are given to attorneys who handle property for the benefit or at the instruction of another person. The risk of fraud is even higher in this instance. The bar should be higher here as well.
Q.17	<i>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?</i>
	Yes
Q.18	<i>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.</i>

	No
Q.19	<i>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.</i>
	No. However, it is possible to have electronic transfers of immovable property by building in sufficient safeguards. Again, if millions could be transacted via the SWIFT network, why not immovable property? Agree though, that it would be insufficient to deal with e-conveyancing issues via an amendment to the ETA.
Q.20	<i>Do you agree that electronic documents of title should continue to be excluded from the application of Parts II and IV of the ETA?</i>
	Yes
Q.21	<i>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.</i>
	No. As documents of title are primarily used in international trade, the digitization thereof should come about only after the enactment of some international treaty or widespread adoption of digitized documents of title. Furthermore, technology has not created the true equivalent of an electronic document of title, we are of the view that the law should not race ahead and enact legislation in this area.
Q.22	<i>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?</i>
	No not yet.
Q.23	<i>Should any class of parties or transactions be excluded from the operation of section 4 of the ETA? If yes, please explain.</i>
	No
Q.24	<i>Should any transactions be added to the exclusions under section 4 of the ETA? If yes, please explain.</i>
	No
Q.25	<i>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.</i>
	No