

**JOINT IDA-AGC REVIEW OF ELECTRONIC TRANSACTIONS ACT  
STAGE II: EXCLUSIONS UNDER SECTION 4 OF THE ETA**

**Q.1 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.**

We agree that wills should continue to be excluded.

The nature of a will and its formalities has a two-fold purpose: firstly, to ensure authenticity and secondly, to safeguard the testator's true intentions. Electronic wills will not be a feasible or practical alternative unless this two-fold purpose is not only accomplished but prove to be a far better alternative to physical wills. If electronic wills are to be recognised, a whole new set of stringent rules and verification procedures should be established (eg. via a new Electronic Wills Act) so that the implementation and enforcement can be carried out with certainty.

The move for electronic wills should only be done if there is worldwide international consensus to accept electronic wills as court documents, where the contents of a will are disputed.

**Q.2 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.**

Unless the use of electronic wills is supported by corresponding legislation to effect implementation and enforcement with certainty, we would not agree with its use, even in exceptional cases.

Thorough research should be made first to ascertain whether the advantages of electronic wills outweigh that of traditional hand written wills. If so, a detailed framework should be set up and tested before the Wills Act is actually amended.

Otherwise, the amendments to the Wills Act would be premature. This would result in more confusion and ad-hoc patchwork amendments to cope with unforeseen circumstances in the future, not to mention the high maintenance cost in implementing such e-security measures following the amended legislation.

Where the testator has assets outside Singapore, there may be problems filing an electronic will or having such a will recognised in other jurisdictions for the purpose of administering his estate. Without the force of law in other jurisdictions to provide for electronic wills, we reiterate that electronic wills and/or secure digital signatures would be premature and may be rendered useless.

Perhaps, an exception can be made in cases where a person in his full mental capacity may have suffered a physical handicap (e.g. stroke, losing a limb, etc) which has rendered him unable to sign. Having a secure digital signature would be useful but without the support of a comprehensive process of verification and implementation, electronic wills are vulnerable to challenges on authenticity. This, in turn, may open up a floodgate of litigation, which is undesirable.

**Q.3 Do you agree that negotiable instruments should continue to be excluded from the application of the ETA?**

We agree that negotiable instruments should generally be excluded from the application of the ETA. However, advancement of electronic cheques can be made following the implementation of the CTS system in Singapore for cheque imaging. This may be welcomed by companies for corporate cheques. Should electronic cheques be embraced, the Bills of Exchange Act would need to cater for provisions in relation to such cheques.

**Q.4 Should the creation, performance or enforcement of an indenture continue to be excluded from the application of the ETA?**

Save for indentures relating to land, all other indentures can be provided for in the ETA. The requirements for documents under seal (such as deeds) seem to be archaic in these modern times. Seals were historically used as a tool to circumvent the doctrine of consideration. Nowadays, this can be addressed by having an express statement in the electronic indenture to evidence and authenticate the parties' intentions that the document is to be signed electronically as a deed. To mirror this position, in UK, a physical deed only needs to contain a statement that it is signed as a deed.

**Q.5 Should Singapore adopt a provision in the ETA to allow secure electronic signatures (or only secure digital signatures) to satisfy the requirement for sealing?**

Yes, save in the case of documents relating to land, as commented in Q.4 above.

However, there are also practical issues which the authorities should also take into account such as the level of e-security required to determine what is considered "secure", the complexity of procedures to be prescribed to ensure secure signature. These are

costing issues which may be deterring factors to successful implementation of such provisions.

**Q.6 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?**

Indentures to land and land transaction documents should be excluded and any implementation or provisions allowing for such electronic signatures would be premature. Considering that the Land Registry has recently converted to an electronic registration system, electronic indentures for land could be made feasible provided a system of e-conveyancing can be established with certainty in implementation and enforcement.

**Q.7 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?**

The requirement for attestation should not change. However, the ETA can provide that the attestation requirement can be satisfied by a witness' electronic or physical signature to an electronic indenture signed electronically by the maker.

**Q.8 Should the ETA provide that a legal requirement for a signature or seal to be witnessed is met by the *witness*' electronic signature?**

Yes, either by way of the witness' electronic or physical signature.

**Q.9 If you answered yes to Q.7 or 13, should any class of transactions be excluded from the provision e.g. land transactions?**

Our comments are expressed in Q.4 and Q.6 above.

**Q.10 When should an electronic indenture take effect?**

We suggest that the electronic indenture itself should provide for the express stipulations as to when it takes effect. Where the electronic indenture does not have an express stipulation, the usual legal requirements for a binding contract (ie. offer, acceptance, consideration) should apply whether or not physical delivery of the electronic indenture takes place.

**Q.11 What should be the requirements for withdrawal from or amendment of an electronic indenture?**

We suggest that this could be expressly provided in the electronic indenture and in the absence of an express stipulation, any withdrawal (or termination) or amendment could be effected the same way as the electronic indenture is made.

**Q.12 Do you agree that section 4 should exclude testamentary trusts i.e. the ETA should not apply to testamentary trusts?**

Yes, we agree for similar reasons and consistency with the views expressed in Q.1 in respect of wills.

**Q.13 Do you agree that section 4 should exclude trusts in relation to land i.e. the ETA should not apply to trusts for land?**

Yes, we agree that trusts relating to land should be excluded. We express similar views as expressed in Q.6 above.

**Q.14 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)?**

Yes, we agree that implied trusts should be allowed in the ETA since there is correspondingly, no exclusion applicable to constructive and resulting trusts. Other than in relation to land, creation of trust (whether actual or implied, resulting or constructive) should be treated in the same way and the mere fact that they are evidenced by electronic records should not negate the existence of such trust so long as the legal elements required to create such trust are satisfied.

**Q.15 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?**

Yes, we agree that Parts II and IV of the ETA should apply to trusts (other than testamentary trusts and trusts in relation to land) and that there should not be any need for special requirements to be imposed. The law on creation and existence of a trust should be sufficient.

**Q.16 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.**

Yes, electronic powers of attorney (“POA”) should be excluded unless they can be effected in a way that is tamper proof. Authenticity is the main concern for the execution of a POA. The authenticity issue could be addressed at the initial stage of the creation of the POA, for example, by imposing a requirement that all electronic POAs must be lodged at the High Court. However, this would require the existing system of registration of POA to be revamped to cater for filing of electronic POAs/documents.

**Q.17 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?**

Yes, we agree. In addition to POAs in relation to the disposition of land, we are of the view that the exclusion should also apply to all other POAs, such as a POA granting powers to deal with moneys, say in a bank account.

**Q.18 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.**

Perhaps individual owners should be excluded from the operation of section 4(1)(d) or (e) of the ETA. This is to address any concern on unsophisticated owners being tricked into unwittingly parting with their property. We suggest that this be only restricted to transfer/disposition of property (including leases) or creation of trust over property i.e. anything which may affect an individual owner’s possession and effective control over the property.

**Q.19 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.**

We are of the view that all land transactions should be excluded to facilitate clarity and certainty in implementation.

**Q.20 Do you agree that electronic documents of title should continue to be excluded from the application of Parts II and IV of the ETA?**

Yes, we agree that electronic documents of title ought to be excluded in view of the fact that the nature of such documents confers title/ownership.

**Q.21 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.**

Any proposal to enact such legislation should involve detailed research and feedback from technology experts and especially, from practising lawyers who will be directly affected by such changes. There should be also clear legislation on the role of regulatory bodies enforcing the law and for e-document repositories facilitating the use of electronic documents of title.

**Q.22 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?**

No – for the same reason that the nature of documents in the carriage of goods concern the conferring of title/ownership in goods. Such legislation has far-reaching impact because it affects international trade commerce and it would require an overhaul of other legislation in relation to commerce, banking, shipping and other international trade finance. Such legislation should not be effected without due consideration of any international treaties and conventions which Singapore is or intending to be a party to.

**Q.23 Should any class of parties or transactions be excluded from the operation of section 4 of the ETA? If yes, please explain.**

Persons and transactions in international trade finance, involving the carriage of goods should be excluded from the operation of section 4 of the ETA for the reasons as highlighted in Q.22.

For consumer protection notices, they need not be excluded so long as the necessary safeguards which would put the consumers in no less advantageous position than in the case of non-electronic notices, are in place.

**Q.24 Should any transactions be added to the exclusions under section 4 of the ETA? If yes, please explain.**

Affidavits and sworn statements should also be excluded under section 4 of the ETA. These documents are made by individuals (both sophisticated and unsophisticated) and carry penal sanctions if the contents are found to be false.

**Q.25 Do the form requirements in any legislation need to be clarified as to the whether or not they may be satisfied by electronic means? If yes, please specify and explain the difficulty posed by the provision.**

We have no comments on this.

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