Review Of the Electronic Transactions Act (Cap. 88) – Review of The Draft UNCITRAL Model Law on Electronic Transferable Records – Submission of Comments

S/No.	Questions	Comments
1.	**Should Singapore adopt the provisions of the draft Model Law into its domestic legislation?**	Yes. As noted in the consultation paper, Singapore was the first country to adopt the Model Law on Electronic Commerce from UNCITRAL by enacting the ETA in 1998. Singapore should seek to be the first country (or one of the first countries) to adopt the Model Law. This would be consistent with progressing Singapore's Smart Nation initiative from a legislative perspective; since the Model Law may more easily enable the application of digital and smart solutions to provide better services for businesses. Singapore's international reputation as being business friendly, and as a globally significant location for FinTech development, will also be burnished through adoption of the provisions of the draft Model Law into its domestic legislation on an expedited basis.
2.	**If the answer to Q1 is Yes, should Singapore wait for other jurisdictions to adopt the provisions of the Model Law first? Are there any downsides to Singapore being an early adopter of the Model Law?**	No, Singapore should not wait for other jurisdictions to adopt the provisions of the Model Law first. In view of the limited scope of the Model Law and its adherence to the concepts of technological neutrality and functional equivalency, no specifically foreseeable downsides are immediately apparent. However, where Singapore elects to be an early adopter this should also be coupled with a willingness to enact further legislation as may become necessary in view of future developments (technological or otherwise) and consequential effects (whether expected or not). As an example, even though the ETA is generally technology neutral, use of an asymmetric cryptosystem grants certain benefits, and perhaps there may be technological

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		developments which should also be granted similar benefits, or other benefits.
3.	**If the provisions of the draft Model Law are to be adopted by Singapore –** **a. Do you agree that it is not necessary to permit parties to derogate or vary by agreement any provisions of the Model Law?** b. **If your answer was "no", which provisions should Singapore permit parties to derogate or vary from by agreement, and why?**	a. Yes. b. N/A.
4.	**If the provisions of the draft Model Law are adopted by Singapore, should a system of accreditation by an accreditation body, of the methods employed by an ETR management system, be introduced for providers of an ETR system?**	Yes. Mere adoption of the Model Law into Singapore domestic legislation may not inspire sufficient confidence to convince parties to participate in ETR schemes. While a system of accreditation will not necessarily result in immediate participation, such system would build confidence. This is applicable even though a global proliferation of accreditation bodies may ultimately be detrimental to ETR schemes since compliance costs would necessarily increase.

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5.	**If the provisions of the Model Law are to be adopted by Singapore, is there a necessity for draft article 13 to be expanded by enacting provisions on the time and place of the dispatch and receipt of electronic transferable records?**	No. Even if necessary, this should be dealt with in other legislation and not in draft article 13 or the ETA.
6.	**Do you have any comments on any other draft article of the draft Model Law?**	**Article 18: Acceptance of electronic transferable record should not be compelled** Articles 18 of the Model Law may be read to suggest that a party may be compelled to accept an electronic transferable record even if it expects, or requires, a hard copy/wet ink transferable document/instrument. While the Explanatory Notes to the Model Law suggest that Article 7 paragraph 2 removes any such implication (A/CN.9/920. para. 40), we would propose that Article 7 paragraph 2 be amended to include “or accept” after “use”. As a consequential change, Article 7 paragraph 3 should be similarly amended. In addition, in view of our comments to Article 19, for clarity it may be appropriate to also add a new Article 18 paragraph 5 as follows: “This Law does not require any person to use or accept an electronic transferable record generated through a change of medium in accordance with paragraphs 1 and 2.” **Article 19: Acceptance of hard copy/wet ink transferable document/instrument should not be compelled** Article 19 of the Model Law may be read to suggest that a party may be compelled to accept a hard copy/wet ink transferable document/instrument even if it expects, or requires,

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		an electronic transferable record. For clarity we would suggest a new Article 19 paragraph 5 as follows: "This Law does not require any person to use or accept a transferable document or instrument generated through a change of medium in accordance with paragraphs 1 and 2." **"Web of contracts" considerations** The consultation paper on page 8 states: "When the Model Law is enacted as domestic law, an electronic record that meets the requirements of the Model Law will be an ETR and enjoy the full legal recognition of the substantive law governing the paper-based equivalent of that document or instrument … [this] domestic law adopting the Model Law would apply even to third parties, who are not privy to the web of contracts executed by the commercial providers and the users of the systems provided by those providers, and the third parties could in accordance with the applicable substantive law be required to recognise the rights and obligations arising from the relevant ETR." While this may be an ideal, it appears that even if the Model Law is adopted by Singapore, parties who seek to use or accept ETRs may nevertheless wish or be required to enmesh themselves within one or more "web[s] of contracts", since: (i) Article 7 paragraph 2 of the Model Law means that parties must choose to use or accept an ETR in place of a hard copy/wet ink transferable document/instrument; (ii) there is no particular currently available technology which will clearly be a reliable method, this together with the ability to choose would generally necessitate a risk assessment to be completed, even post-accreditation, and a contractual relationship with the technology or platform provider may facilitate a more positive risk assessment outcome (e.g. the provider's contractual obligations may positively affect the evaluation of the technology risks); (iii) use of certain technology in connection with the reliable method may require licensing as a consequence of intellectual property law; (iv) contracting may be required to take advantage of insurance terms (e.g. where the

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		provider has procured insurance against fraud or data breaches); or (v) this may ease compliance with other substantive law (for example, if personal data will be transferred to the provider a contractual relationship may be the most efficacious method of complying with Section 26 of the Personal Data Protection Act 2012).