



**Response to the Info-communications Media Development Authority's  
Public Consultation on the Electronic Transactions Act**

Submitted by

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## I. Summary of major points

DBS supports these legislative amendments to the ETA which extend the presumption of validity of electronic records and electronic signatures to the majority of hitherto excluded types of transactions. Notwithstanding DBS' general support, DBS has specific concerns around:

- (a) The principle of functional equivalence and whether it is relevant in all instances especially if there is no digital analogue to traditional paper-based processes (see response at Question 10);
- (b) Whether recognising the validity of electronic contracts for property/land transactions meaningfully reduces friction for land owners facing high volume given that updates and lodgement to the land title registry continues to require manual inputs into the STARS system (see response at Question 16); and
- (c) Whether technologies that rely on prime factorisation such as DLT should be encouraged given that recent advancements in quantum computing appears to undermine the central premise of robustness for prime factorised based encryption. Particularly, DBS is concerned about the implications for past electronic transactions/records secured by such technologies when prime factorisation is no longer computationally difficult (see response at Question 19).

## **II. Statement of interest**

DBS and its affiliates are licensed to provide banking and other financial services in Singapore and Asia.

As an organisation that believes that a greater but appropriate adoption of technological and digital solutions is key to improving the delivery of financial services, DBS has considerable interests in and is supportive of legislative developments that enhances recognition and enforceability of electronic transactions.

DBS welcomes the opportunity to make this submission on the Consultation Paper.

DBS would be pleased to clarify any of the views and comments made in this submission.

### III. Comments

**Question 1:** IMDA welcomes general views and comments on IMDA's overall approach to minimise subject matter under the current exclusion list.

DBS generally agrees with the approach to minimise subject matter under the current exclusion list.

However, DBS queries whether it is truly required for the ETA to maintain functional equivalence for all cases especially if the use case concerned offers no digital analogue to a traditional paper-based process. For example, it is unclear what is the digital equivalent of “sealing” and what satisfying this digital equivalence will achieve in the case of indentures (for more on this, see DBS’ response to Question 10 below).

Hence, if there are no true digital analogue to the paper-based process, then it may be that imposing functional equivalence may be counterproductive to encouraging electronic transactions.

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**Question 2:** IMDA welcomes views on the necessity and adequacy of the sunrise period until 2021 to address any policy/implementation challenges with the use of electronic versions of the transactions/documents currently excluded from the application of the ETA.

DBS takes the view that a sunrise period is required given that there will be infrastructural, educational, and change management issues that needs to be addressed. Accordingly, a sunrise period of at least 24 months from the moment the amendments are passed, should be provided.

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**Question 3:** IMDA welcomes views and comments on IMDA's proposal to remove wills from the exclusion list under the First Schedule to the ETA, on the basis that the safeguards in the Wills Act will be maintained.

DBS welcomes the proposal to remove Wills from the exclusion list subject to the safeguards in the Wills Act being maintained. However, the existing safeguards in the Wills Act are currently premised on a Will being executed physically and may not be feasible for wills which are executed electronically. In this regard, any proposed amendments in the Wills Act may need to consider alternative safeguards which are practical and appropriate for wills which are executed electronically.

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**Question 4:** IMDA welcomes views and comments on the potential challenges/concerns with the use of electronic wills (such as technological obsolescence) and how they may be addressed with existing technology.

A key concern is whether and how third parties may verify the accuracy of an electronically executed will and whether and how third parties are able to ascertain whether a copy of an electronic will represents the latest version. One approach may be to mandate the depositing and registration of all electronic wills in the Wills Registry.

Another concern is that an electronic will should not be shared or disclosed without some level of protection. Banking secrecy and PDPA breaches tend to be more prevalent with the use of electronic means. Hence, all electronic wills should be at the very least password protected so that there is a reduced chance of unintended disclosure.

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**Question 5:** IMDA welcomes views and comments on IMDA's proposal to remove documents such as bills of lading, warehouse receipts, dock warrants or negotiable instruments such as bills of exchange, promissory notes or cheques from the exclusion list under the First Schedule to the ETA.

DBS welcomes the proposal to further reduce the list of excluded documents under the ETA and views this as necessary for promoting greater digitalisation of commerce and related transactional activities.

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**Question 6:** IMDA welcomes views and comments on IMDA's proposal to adopt the MLETR into Singapore law.

To the extent that the adoption of MLETR into Singapore law offers cross-jurisdictional recognition and support for the validity of ETRs, DBS welcomes this development for its positive effect in encouraging international transactions facilitated via digital channels. DBS holds a positive view of digital transaction channels and particularly ETRs due to its more secure, efficient and scalable nature.

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**Question 7:** IMDA welcomes views and comments on how the potential concerns and challenges (such as verification/authentication and technological obsolescence) with the use of electronic POAs can be addressed with existing technologies.

DBS welcomes the proposal to use electronic POAs. A key concern is that an electronic POA should not be shared or disclosed without some level of protection. Banking secrecy and PDPA breaches tend to be more prevalent with the use of electronic means. Hence, all electronic POAs should be, at the very least, password protected so that there is a reduced chance of unintended disclosure.

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**Question 8:** IMDA welcomes views and comments on the proposal to remove POAs for the purposes of enforcement of security interests from the exclusion list under the First Schedule to the ETA.

It is not clear why only POAs for the enforcement of security interests are in-scope. If the concern is that there may be potential concerns of abuse in the familial context, then perhaps it should be considered whether POAs in all commercial contexts (ie. POAs issued by corporates) should be included in the ETA.

Further, POAs are usually executed by common seal or by 2 directors/1 director + 1 secretary. IMDA suggests that the need for verification and authentication of identities of parties could be addressed by the use of existing technologies such as digital signatures and distributed ledger technology. It is not clear how "sealing" will be electronically executed and what "sealing" aims to achieve in the electronic context.

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**Question 9:** IMDA welcomes views and comments on IMDA's proposal to remove Lasting Powers of Attorney from the exclusion list under the First Schedule to the ETA, on the basis that safeguards in the Mental Capacity Act will be maintained.

DBS welcomes the proposal to remove LPAs from the exclusion list under the First Schedule of the ETA. A key concern is that an electronic LPA should not be shared or disclosed without some level of protection. Banking secrecy and PDPA breaches tend to be more prevalent with the use of electronic means. Hence, all electronic LPAs should be at the very least password protected so that there is a reduced chance of unintended disclosure.

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**Question 10:** IMDA welcomes views and comments on IMDA’s proposal to remove indentures from the exclusion list under the First Schedule to the ETA.

It is noted that the ETA amendments do not seek to amend or supplant the requirements for indentures or deeds i.e. sealing and delivery. It is not clear how “sealing” will be electronically executed and what “sealing” aims to achieve in the electronic context.

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**Question 11:** IMDA welcomes views and comments on IMDA’s proposal to remove testamentary trusts from the exclusion list under the First Schedule to the ETA on the basis that safeguards in the Wills Act will be maintained.

DBS does not object to the proposal to remove testamentary trusts from the exclusion list, subject to this proposal not having any impact on existing requirements for document verification (e.g. Grant of Probate, Letters of Administration etc.).

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**Question 12:** IMDA welcomes views and comments on IMDA’s proposal to not remove declarations of trust relating to immovable property, and dispositions of equitable interest.

DBS does not object to this proposal, subject to this limited or general powers of attorneys still being able to be signed in hard copy form.

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**Question 13:** IMDA welcomes views and comments on how the potential challenges (such as verification/authentication and technological obsolescence) with the use of electronic contracts for the sale or disposition of immovable property can be addressed with existing technologies.

DBS has no comments on how existing technologies may be used to address the issues identified.

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**Question 14:** IMDA welcomes views and comments on IMDA’s proposal to remove contracts for the sale or disposition of immovable property from the exclusion list under the First Schedule to the ETA.

DBS has no comments.

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**Question 15:** IMDA welcomes views and comments on the proposed requirement that only secure electronic signatures or digital signatures will be accepted for property transactions conducted electronically to ensure greater certainty, mitigate concerns of fraud and safeguard the vulnerable.

DBS welcomes the proposal to remove contracts for the sale or disposition of immoveable property from the exclusion list under the First Schedule of the ETA.

However, the proposed requirement for secure electronic signatures or digital signatures will compel the use of solution providers which are equipped to provide and ensure secure electronic signatures or digital signatures. The requirements under the ETA for secure electronic signatures or digital signatures are prescriptive and require standard security protocols. As a result, making this requirement mandatory will inevitably have 2 unintended consequences: (a) increased transaction costs for property transactions conducted electronically and (b) as a result of (a), forcing parties to revert to conducting property transactions physically.



In view of the above, DBS would like to propose that IMDA consider alternative approaches that may equally serve to safeguard the parties to a transaction. One possible approach is that a party to a transaction could be verified and authenticated using MyInfo or SingPass. This is no different from the multiple transactions already carried out today using MyInfo or SingPass/CorpPass as a source of authentication and verification such as the lodging of property title via Singapore Land Authority's STARS system which is authenticated by CorpPass.

Further, to facilitate adoption of such processes and give confidence to users in the marketplace, it may be helpful if the accreditation framework considers a vendor's compliance with such requirements.

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**Question 16:** IMDA welcomes views and comments on whether Singapore should amend its legislation to facilitate the use of electronic contracts for the sale or disposition of immovable property.

DBS agrees with IMDA that Singapore should amend its legislation to facilitate the use of electronic contracts for the sale or disposition of immovable property.

However, given that Singapore's immovable property legal system is based on a Torrens system, it is respectfully submitted that unless electronic contracts are interwoven to automatically update records in the Singapore land title registry maintained by Singapore Land Authority, electronic contracts conclusion is not likely to reduce much friction for land owners facing high volume as such updates/lodgement in the land title registry will still have to be manually inputted into the STARS system.

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**Question 17:** IMDA welcomes views and comments on IMDA's proposal to remove the conveyance of immovable property or the transfer of any interest in immovable property from the exclusion list under the First Schedule to the ETA.

DBS has no comments.

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**Question 19:** IMDA welcomes views and comments on IMDA's views that the ETA does not prohibit the use of DLT, smart contracts and biometrics and that no further amendments to the ETA are necessary to facilitate the usage of biometric technology in electronic transactions.

DBS shares the view that the ETA presently does not prohibit the use of DLT, smart contracts and biometrics.

However, DBS would like to point out that this position may change in future for technologies that rely on prime factorisation such as DLT given that recent advancements in quantum computing appears to undermine the central premise of robustness for prime factorised based encryption, i.e. quantum computing systems have relative ease to crunch thru prime factorisation encryption compared to traditional binary computing systems.

Should this come to pass and DLT is no longer as secure as before then DBS' views on whether DLT is still sufficiently robust for the purpose of verification and authentication and ETRs under the ETA may change.

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**Question 20:** IMDA welcomes views on other possible technologies that enterprises or sectors may wish to deploy, but are unclear whether the ETA facilitates or prohibits these.

In view of DBS' proposal for the use of government operated digital identity verification and

authentication systems like SingPass and CorpPass, DBS would like to seek clarity on whether these would be deemed as sufficiently robust under the ETA for the purpose of verification and authentication.

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**Question 21:** IMDA welcomes views and comments on whether the existing voluntary nature of the CA accreditation framework for Digital Signatures should be maintained.

DBS has no comments.

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**Question 22:** IMDA welcomes views and comments on the adoption of the latest version of either (or both) International CA audit frameworks (WebTrust and ETSI) directly for applicants applying/renewing for CA accreditation to comply with.

Unlike the previous framework where large value or significant transactions are excluded from the ETA, the inclusion of these transactions warrants a reconsideration if a compulsory accreditation framework is necessary to facilitate adoption of such processes and give confidence to users in the marketplace (including the safeguarding of data).

DBS also respectfully submits that there should be a residual discretion to calibrate or refine the CA framework should this be necessary. Specifically, on this discretion, this should be set out in further details in the amendments to the ETA regulations and the amendment should also expressly specify when this discretion may be invoked, any criteria to be met for this discretion to be exercised and by whom this discretion can be exercised.

Clarity that any discretion is not an unfettered one is important as otherwise, there is a risk that calibration or refinement to the CA framework will unintentionally create non-compliance with WebTrust or ETSA standards.

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**Question 23:** IMDA welcomes views and comments on whether the above areas adequately cover what the ETA Review should include.

DBS takes the view that the above areas adequately cover what the ETA Review should include.

## **IV. Conclusion**

DBS is supportive of this legislative amendment to adopt a more permissive legal positions in relation to the recognition of electronically recorded and concluded contracts.

However, DBS is concerned over whether the principle of functional equivalence is relevant in all cases.

Further, DBS is also not certain that amending the ETA to facilitate the use of electronic contracts for the sale or disposition of immovable property will address the issue of high volume transactions faced by large landlords in Singapore given that updates/lodgement in the land title registry will still need to be manually inputted into the STARS system.

DBS would be pleased to clarify any of the views and comments made in this submission, as appropriate.