APPENDIX B

COMMENTS AND FEEDBACK

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.

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.

In principle, we have no objections to the proposed exclusion of wills from the ambit of the ETA. The amendment of the First Schedule to the ETA will however not make any difference to the current law of wills, as the formal requirements for the validity of wills is still determined by the Wills Act (section 6) and the Family Justice Rules and Family Justice Courts Practice Directions, which currently do not envisage or allow for wills in non-paper form.

A lot more will have to be done before digital or electronic wills can become legal. We note that the paper has highlighted that:

> *"Wills have been and continue to be universally excluded from similar electronic transactions legislation in other jurisdictions such as New Zealand and Australia. Wills are also excluded under the Australian Commonwealth Model Law on Electronic Transactions and the Canadian Uniform Electronic Commerce Act. In the United States, there is currently a draft Uniform Electronic Wills Act that deals with the formation, validity and recognition of electronic wills that is being discussed by the Uniform Law Commission. To date, only the American states of Indiana and Nevada have legislatively provided for the creation of electronic wills. This could affect the cross-jurisdictional enforcement of electronic wills."*

Detailed, careful consideration is therefore necessary, including a study into the reasons why other leading common law jurisdictions have to date rejected electronic wills. We note that the paper states that Wills Act safeguards will have to be maintained (and we think that there would be a need even to enhance the safeguards, when digital wills are permitted).

Before the principal legislation (the Wills Act) is amended, it is also important to consider how a non-paper will affect probate applications (whether contentious or non-contentious), as the current law is predicated upon a paper will.

We hope and look forward to having a dialogue with the AGC on the amendments to the Wills Act and the subsidiary legislation in such event.

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.

In principle, we have no objections to the proposed exclusion of lasting powers of attorney (LPAs) from the ambit of the ETA. The amendment of the First Schedule to the ETA will however make no difference to the current law of LPAs as the governing legislation of LPAs is the Mental Capacity Act and Mental Capacity Regulations, which do not allow for LPAs to be in digital or electronic form, and

in fact, it must be in the prescribed paper forms and manually signed by the donor, donee(s) and the certificate issuer.

We note the MSF initiative to transform the LPA creation and registration process to an online portal and we look forward to being able to discuss with the OPG and other stakeholders how to maintain or even improve safeguards in the LPA creation / registration / revocation process if and when LPAs can be made and registered in a paperless form.