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Our Ref: Reg/2305/2004-01/lka

15 Mar 2004

Law Reform and Revision Division
Attorney-General's Chambers
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Dear Sir

IDA-AGC REVIEW OF ELECTRONIC TRANSACTION ACT: ELECTRONIC TRANSACTING ISSUES

We refer to IDA's consultation paper on the above dated 19 Feb 2004.

2 StarHub is pleased to provide herein our response to the consultation paper. Kindly note that the response has been confined to selected relevant questions raised in the consultation paper.

3 As requested, we will provide to you softcopy of the response via electronic mail.

4 We look forward to your decision on the matter.

Yours sincerely
For and on behalf of
StarHub Pte Ltd

Tim Goodchild
Head (Regulatory)

Encl.

Cc Mr Andrew Haire
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STARHUB'S RESPONSE TO THE IDA-AGC CONSULTATION PAPER
ON
REVIEW OF ELECTRONIC TRANSACTION ACT:
ELECTRONIC CONTRACTING ISSUES

Q9: Should the ETA provide when an offer and acceptance in electronic form takes effect? If yes, please suggest the terms of the necessary legislative provision to effect the change and comment whether the provision should apply only if the parties opt-in.

No, the ETA should not place any undue restrictions on how online business/commercial transactions are effected; when an offer and acceptance in electronic form is effected should be left to the prevailing industry practices and normal contractual principles.

Q10: Should the ETA provide that proposals to enter a contract made by electronic means to the world at large are to be treated as an invitation to make offers, unless the proposal indicates that the person making the proposal intended to be bound in case of acceptance?

Yes, the ETA should cater for such a provision so as to set a benchmark on acceptable online business practices. Unless otherwise stated, all online proposals should be treated as an invitation to make offers, which is generally the norm now.

Q11: Should references to "declaration, demand, notice or request" be added to section 12 of the ETA for consistency with the UNCITRAL draft Convention?

Yes.

Q16: Should the ETA adopt a provision to clarify the validity of contracts resulting from the interaction of automated information systems from the draft UNCITRAL Convention? (See paragraph 6.2.3)

Yes, this will encourage the development of online business transactions in Singapore as it eradicates any doubts concerning the validity of contracts resulting from the interaction of automated information systems.

Q19: Should the ETA contain a provision requiring a party offering goods or services through an automated information system to make available to parties that use the system some technical means allowing them to identify and correct errors? (See paragraph 6.5.3)

No, it is difficult to define "error". A change of mind on the part of one after effecting an online transaction should not be a basis for avoiding the transaction. That being the case, it would be difficult to determine the ambit of the technical means to identify and correct errors. Who will be the person responsible for determining whether or not the technical means are adequate? What may be suitable or appropriate for a certain category of transactions may not be so for different category of transactions eg: online securities transactions vis-à-vis online purchase of a book. Any such provision will create uncertainty in commercial relationships.

Q23: Should the ETA include a provision on electronic originals in the context of contractual transactions? If yes, what should be the criteria for the electronic functional equivalent?

Any such provision should be considered in the light of Section 9 ETA (Retention of electronic records). The conditions in Section 9(1)(a)-(d) ETA should be synchronized with the requirements/conditions of any such provision. Currently, under the existing Section 9 ETA, a person who wants to retain the documents in electronic form must obtain the consent of all relevant governmental authorities. There may be situations whereby for the same set of records (eg: financial records), a company must obtain the consent of more than 1 governmental authority (eg: IRAS and Registrar of Companies). The different governmental authorities may impose different conditions for granting the consent (eg: IRAS' guidelines "Keeping of Records in Imaging System" and "Keeping Machine-sensible Records & Electronic Invoicing"). This will inevitably translate to more operating costs on the company who has to comply with 2 different sets of conditions. Therefore, IDA-AGC should also consider amending Section 9 ETA along the lines of Article 8 Model Law on Electronic Commerce or at least simplify the requirements of Section 9.