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ADSAN LAW

## THE USE OF ELECTRONIC SIGNATURES IN SINGAPORE

The COVID-19 pandemic and the resulting measures implemented by the government to curb the spread of the disease has caused widespread disruptions to businesses and their activities. Where businesses still carry out most of their transactions via paper documents, safe distancing, working from home and other measures can make obtaining traditional “wet ink” signatures inexpedient and inconvenient. The framework for electronic transactions under the Electronic Transactions Act (“ETA”) may be the solution for businesses in the “new normal” that many find themselves in.

### **Electronic records and signatures**

The ETA provides for legal recognition of information in the form of an electronic record, and thus makes such electronic records legally valid and enforceable. Likewise, the ETA stipulates that information in the form of an electronic record satisfies any rule of law that requires information to be in writing or provides for certain consequences if it is not in writing, as long as the electronic record is accessible so as to be useable for subsequent reference.

Electronic signatures are similarly given similar treatment under the ETA. As long as the requirements of the ETA are satisfied, an electronic signature will satisfy any rule of law that requires a document to be signed or provides for certain consequences if it is not signed.

The requirements to be met under the ETA in relation to electronic signatures are as follows:

1. The method used must be able to identify the person signing and to indicate the person’s intention in respect of the information contained in the electronic record; and
2. The method used must be:



- a. As reliable as appropriate for the purpose for which the electronic record was generated or communicated, in light of all the circumstances, including any relevant agreement; or
- b. Proven in fact to have fulfilled the functions described above, by itself or together with further evidence.

The term “electronic signature” is not defined in the ETA. However, as may be apparent from the requirements set out in the ETA and reproduced above, an electronic signature that satisfies the ETA need not be in a form which we commonly recognise as a signature, as long the method of signature used satisfies the authenticating function of a signature.

An electronic signature that satisfies the ETA can thus come in a variety of forms. For example, an email sent from an identifiable email account can be an electronic signature under the ETA, as the name of the email address from which the email was sent will serve to identify the person sending it. A person using a stylus pen or light pen to sign a document on a touchscreen may also be an electronic signature under the ETA. Documents prepared using electronic signature solutions or platforms such as DocuSign or Adobe Sign may also satisfy the requirements under the ETA.

### **Excluded Matters**

However, there are certain types of documents and transactions, known in the ETA as Excluded Matters, which are specifically excluded from the operation of the ETA.

These Excluded Matters are:

1. The creation or execution of a Will.
2. Negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.
3. The creation, performance or enforcement of an indenture, declaration of trust or power of attorney, except for implied, constructive and resulting trusts.
4. Any contract for the sale or other disposition of immovable property, or any interest in such property.
5. The conveyancing of immovable property or the transfer of any interest in immovable property.

In any of the above situations, parties will not be able to rely on the provisions of the ETA to give legal validity to contracts entered into and signed electronically. However, exclusion from the ETA does not automatically mean that parties cannot carry out such transactions electronically, as it may be possible for electronic records or signatures to satisfy requirements of law for writing or signatures without reliance on the provisions of the ETA. For example, our local courts have on more than one occasion found that contracts for the disposal of immovable property concluded over email were legally binding and satisfied the requirement under the Civil Law Act (cap 43) that such contracts be in signed writing, without relying on the provisions of the ETA.

While exclusion from the operation of the ETA does not automatically preclude the conclusion of transactions electronically, care must be taken to ensure that the method of signature used satisfies the relevant laws and requirements that govern the document or transaction in question. As a matter of prudence however, execution of documents for transactions that fall within the matters excluded by the ETA should continue to be via traditional “wet ink” signatures, as the provisions of the ETA cannot be relied on to fulfil legal requirements that such documents be in writing or signed. Deeds and powers of attorney in particular should not be executed using electronic signatures.

### **Potential changes to the ETA**

The ETA was originally enacted to facilitate electronic commerce and give predictability and certainty to contracts concluded and signed electronically.

In recognition of the changing landscape in the global economy and technological advances, the Infocomm Media Development Authority of Singapore (“IMDA”) launched a public consultation on 27 June 2019 to seek views on the review of the ETA. New technologies have created new ways of transacting, and electronic commerce is becoming increasingly prevalent. As such, the ETA is undergoing a review to ensure that it continues to be progressive and facilitative of electronic commerce and digital innovation.

In particular, the IMDA is looking to enable more documents and transactions to be covered by the ETA. As such, IMDA is proposing to remove the following documents and transactions from the list of Excluded Matters:

1. The creation of Wills, on the basis that the validity of a Will depends ultimately on the Wills Act (Cap 352);
2. Bills of lading, warehouse receipts, dock warrants or negotiable instruments such as bills of exchange, promissory notes or cheques;
3. Powers of attorney for the enforcement of security interests (while retaining all other types of powers of attorney (“True Agency POAs”) within the Excluded Matters, given the potential for abuse;
4. Lasting powers of attorney, on the basis that validity of such documents will ultimately depend on satisfaction of the requirements of the Mental Capacity Act (Cap 177A);
5. Indentures;
6. Testamentary trusts, on the basis that the safeguards in the Wills Act (Cap 352) will be maintained;
7. Contracts for the sale or disposition of immovable property, subject to a requirement that only secure electronic signatures or digital signatures be accepted for property transactions concluded electronically; and
8. Documents and transactions relating to the conveyance of immovable property or the transfer of any interest in immovable property, subject to amendments to other relevant statutes, such as the Conveyancing and Law of Property Act (Cap 61) and the Land Titles Act (Cap 157).

In summary, the IMDA proposes removing nearly all Excluded Matters for business related transactions (with the exception of trusts over immovable property, dispositions of equitable interests, and True Agency POAs), while retaining personal and familial safeguards which require greater safeguards.



## Conclusion

While the ETA may provide for greater certainty and predictability for electronic commerce, electronic records and signatures are, by their very nature, more susceptible to being tampered with. An email sent from an identifiable email address may satisfy legal requirements of writing and signature under the ETA. However, email accounts can be hacked by third parties, while email addresses may be spoofed, giving such emails an air of authenticity belying its malicious intent.

As such, businesses considering leveraging on the ETA must ensure that they have in place sufficient technological and security measures for the authentication of electronic signatures. Business should also evaluate the use of electronic records and signatures carefully where the subject transaction is one of high value, or where the business may be dealing with a party with whom they have no experience.

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### Reference materials:

Consultation Paper issued by the Infocomm Media Development Authority on review of the Electronic Transactions Act (ETA) (Cap. 88) (accessible at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulation-Licensing-and-Consultations/Consultations/Consultation-Papers/Public-Consultation-on-the-Review-of-the-Electronic-Transactions-Act/Public-Consultation-Paper-on-the-Review-of-the-Electronic-Transactions-Act-27-Jun-2019.pdf?la=en>)

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