

Public Consultation on Review of Draft UNCITRAL Model Law on Electronic Transferable Records – Respondents

Question 1: Should Singapore adopt the provisions of the Model Law into its domestic legislation?

Answer: The rationale for adopting the Model Law into Singapore domestic legislation is to facilitate the use of ETRs and give Singapore an edge over its competitors. However, this has to be balanced with issues of what "transfer of control" entails for an ETR and what will be required as evidence to prove transfer is "reliable". There is also the issue of multiple copies. Even if the ETR specifies the number of originals, and in the end, if there are more than the specified number, how does one determine which is original? Will it be left to the individual legislation has to have deeming provisions to absolve the payer from liability and give a good discharge under specified circumstances which are clearly described? Otherwise, there will be dispute which may defeat the purpose of facilitating quicker business processes.

Question 2: If the answer to Question 1 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?

Answer: There may be downsides in terms of there being no precedents or guidelines of how the provisions are applied to actual facts and circumstances. Singapore will be the testing ground for the effectiveness of the Model Law. It is preferred that Singapore does not adopt the Model Law before all other insurance related regulations e.g. Insurance Act, is reviewed as we would prefer alignment with the ETR Act.

Question 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 draft Model Law?

Answer: No. Parties should have the opportunity to vary the provisions of the Model Law by agreement to suit their unique business situations, just as they are able to vary legal rights by agreement.

(b) if your answer to (a) was no, which provisions should Singapore permit parties to derogate or vary from by agreement, and why?

Answer: Parties should be allowed to vary by agreement provisions which relate to the rights of the parties eg the parties can agree that if the other party can show that certain agreed processes regarding signature are in place, the other party will not dispute the reliability of the method to identify the person and prove his intention in respect of the information contained in the ETR (Art. 9) or that if certain agreed conditions are met, the general reliability standard (Art. 12) would have been met. However, definitions and provisions relating to the nature, validity and enforceability of the ETR should not be varied.

Question 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?

Should not be mandatory, but if a system of accreditation is adopted, then it could be deemed reliable and save proof of reliability. But businesses should have the option whether to accredit or

not as accreditation could mean recurring costs for businesses and not suitable for SMEs. We need a clearer view of system of accreditation.

Question 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?

Answer: Enacting provisions will save parties having to provide for this in contract by agreement.

Question 6: Do you have any comments on any other draft article of the draft Model Law? If so, please identify the specific draft article in your comment and if relevant, the specific paragraphs of the Explanatory Notes in A/CN.9/920 that your comment relates to.

Answer: There is no definition of what "control" in Art. 10 entails. Art. 12 merely provides general reliability standard which evidence control. "Or" suggests only one criteria needs to be met. Should it be evidenced by at least a majority of criteria instead of only one? What is the balance required? To show there is no control, is it sufficient to show one or two are not met? Parties have to provide contractually for this. Will this be left to the individual legislation eg Insurance Act or Bill of Lading Act to deal with?

Key issues to be addressed in the new regulation are:

1. Security requirements - how to prevent unauthorized access?
2. Audit by an independent body
3. Accreditation by an independent party
4. Transferable rights, for example in the event of Assignment
5. Determination of place & time - this will have impact to our business if we were to extend eSub application process for direct customers.

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