

Date: 10 April 2017

To:

Ms. Aileen Chia
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Via Email: Consultation@imda.gov.sg

From:

Citibank N.A., Singapore Branch

Dear Sirs

Review of the Electronic Transactions Act (Cap. 88) – Review of draft UNCITRAL Model Law on Electronic Transferable Records (“Consultation Paper”)

Our responses to the Consultation Paper are as follows:

A. ADOPTION OF THE MODEL LAW

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

The Model Law gives legal recognition to a hybrid of the paper copy of the transferable or negotiable instrument and the electronic version of that document. We observe there may be risks associated with recognition of an ‘original’ without establishing an obligation to link that original with its electronic record in order to guarantee its singularity or non-duplication, including the possibility of separate transfers of versions of the same instrument.

It is at least theoretically possible to manage the chain of endorsements centrally through a system that administers and records electronic signatures and endorsements (via DocuSign, Adobe Sign) although that would require a reliable and broadly acceptable ‘hub’ to manage that exchange, in direct competition with the private ‘clubs’ or exchanges (Bolero, CargoDocs).

The route set out in the Model Law, which accepts the co-existence of the physical (paper) and logical (electronic) versions of the same document was intended to achieve ‘functional equivalence’. This

duality however, raises challenges in respect of the title's uniqueness or guarantee of singularity or non-duplication. Left uncontrolled, it could lead to equally valid copies of the same title in possession (paper title) or control (electronic copies) of separate holders. An unbreakable or at least reliable technology link still needs to be established, in a federated form (blockchain) or a centralised form.

We readily support the adoption of the Model Law into Singapore's domestic legislation. While there is still a need for the technological gap to be bridged to ensure that the paper or electronic versions of the document can be verified and provide confidence in respect to its uniqueness or singularity, nevertheless when enacted in domestic legislation of various jurisdictions, the Model Law will facilitate the cross-border use of Electronic Transferable Records ("ETRs").

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.

We are minded for an early adoption of the Model Law, continuing Singapore's tradition of endorsing technologies that bring a competitive advantage to trade. However, in equal measure, we observe that its implementing legislation may need to be incorporate authority or a reference to statutory instruments that in the future will shape methods for reconciliation (or record-keeping) and control between any one or more electronic copies and the paper copy of the same document, and electronic endorsements.

B. SELECTED ISSUES IN THE DRAFT MODEL LAW AND COMMENTARY

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

Yes, it is not necessary to permit parties to derogate or vary by agreement any provisions of the draft Model Law as variance would disrupt uniformity or undermine the system of functional equivalence.

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.

Yes, such accreditation would require a broad consensus in respect to technologies and standards. Currently consensus has been organically achieved by private clubs or exchanges (e.g. Bolero). A declaration by such body would guarantee a certain level of objectivity in the assessment of the reliability of methods used in the fulfilment of its function.

Question 5 : If the provisions of the Model Law are to be adopted in 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.

Yes, ETRs transcend physical boundaries and create a need for positive rules to determine the place of dispatch and receipt of ETRs. Enacting provision on the time and place of dispatch and receipt of electronic transferable records will provide legal certainty as to the applicable law relating to the validity and the transfer of an ETR.

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 comments relate to.

We seek clarification whether draft Article 12 will be adopted as a general standard for assessing the reliability of a method notwithstanding that paragraph 4.5.3 of the Consultation Paper states it may not be necessary to amend Section 8 (b)(i) and Section10(2)(b) of the ETA to incorporate the list of circumstances contained in draft article 12 (a).

Should you have queries or wish to discuss, please contact:

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