

General comments:

We would suggest a holistic framework to ensure the authenticity and integrity of the Electronic Transferable Record:

- Standardisation of authentication of electronic transferable records via either a digital signature or available and agreed secured technologies to avoid multiple claims;
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- Standardisation of authentication across borders for cross-border transacting parties especially in areas of trade financing or banking transactions that span across jurisdictions;
- Provision of clear clarity in terms of extent of liabilities for the respective transaction parties in the event of errors, distortion of information via security breaches such as hacking etc.;
- Provision on the transaction parties' usage of partial paper and partial electronic transferable record, and
- Provision on the treatment on transacting parties deciding to switch usage from paper to electronic transferable record and vice versa.

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We would also propose a cross-border or international institution (supported by multiple jurisdiction regulators) to be the independent party who will be the party responsible for certification or controlling a common agreed authentication code for record keeping, storage, archival.

In addition, there are important legal issues on the admissibility of electronic evidence in legal proceedings. These issues have to be addressed if electronic records are to be trusted worldwide in electronic communications and electronic commerce.

While Singapore may have the infrastructure to support authenticity and integrity of signature systems, for it to work well with banks when it comes to risk management, the new law may need to clearly define the extent of liabilities on the respective transacting parties should the business deal fall through midway.

Transacting parties from different jurisdictions will need to have a standardised digital signature system and be assured on the reliability before this can take off. Are banks leveraging on other digital data points from the transacting companies for additional level of security, especially for high value deals?

We note that some of the feedback provided during closed consultation have been

addressed in this public consultation paper but not others, which are listed as follows:

- Shouldn't there be an equivalent clause to address the legal guideline when ETR information / data are corrupted? We do not have this issue with paper-based transferable document / instrument. Please refer to eUCP article e11 which was cited during the closed consultation.
- The draft Model Law should address the functional equivalent rule on use of ETR for security right purposes. We would like to reinstate Article 26 (Use of an electronic transferable record for security right purposes) as we understand that it is applicable in China where banker's acceptance drafts can be lodged in the electronic commercial draft system in China as a form of security pledged.
- Draft Article 13 (Indication of time and place in electronic transferable records) should be amended to reflect provisions similar to eUCP article e3 (definition of "place of presentation" & "received") and eUCP article e5(e) to address expiry date of presentation if there is system failure prohibiting retrieval of transmitted electronic record.
- Need to address transferring of signature on ETR to paper-based medium when it goes through the change of medium.
- We should explore including a provision where in the event the ETR is not within our control, there should be a presumption that our records evidencing the ETR (where the reliability requirements under the draft Model Law have been met) shall be effective unless evidence to the contrary is adduced.

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

Yes. Adoption would help to promote legal recognition of electronic transferable records at a global level and is in line with Singapore's objectives as a Smart Nation. With the rapid growth in digitalisation and globalisation, businesses are conducted not only within its own operating jurisdiction but also across different jurisdictions. It is important to have a harmonised set of electronic transferable records to ease the duplication of documentation work across jurisdictions.

If the Model Law can address and satisfy the requirements of singularity and uniqueness of electronic records constituting the ETR, then Singapore should adopt the provisions of the Model Law into its domestic legislation.

In addition, the Electronic Transactions Act ("ETA") and the Evidence Act ("EA") would have to be reviewed in tandem with the UNCITRAL Model Law ("Model Law"), to align with international standards and provide legal recognition to electronic transferable records ("ETRs"), if the Model Law is to be adopted. Specifically, provisions should be made on the admissibility of ETRs as electronic evidence in legal proceedings.

Extensive amendments to the ETA and EA may be required. Operational adjustments

would need to be made to comply with the new requirements.

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?

Being an early adopter would elevate Singapore’s reputation as a Smart Nation. However, early adoption of the Model Law has the following implications:

1. Singapore would not have the opportunity to evaluate issues which may be encountered by other early adopter(s) as well as leverage their experiences before adopting the Model Law into its domestic legislation.
2. The Model Law may be under-utilized initially in the cross-border context. The Model Law may also be amended subsequently due to feedback from other countries which may necessitate a further review of the ETA.
3. Infrastructure for electronic transferable records may not be readily available.

Where it involves international commerce such as trade financing, early adoption would not help in giving operating efficiency dealing across jurisdictions with differences in legal recognition and enforceability of ETRs.

We propose for Singapore to work concurrently with other key jurisdictions as number of cross border transactions will need to rely on the implementation of the Model Law in these countries. If these countries are not ready or do not intend to adopt, it will not create the benefits as such. However, there may be some benefits for early adoption where it does not involve international commerce but the benefits may not be optimised. Further, there could also be amendments to the provisions subsequently when cross-border context is included at a later stage.

If Singapore decides to be an early adopter, an industry work group equipped with the necessary skillsets and expertise should be formed to provide guidance on handling any related issues.

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

Yes. The Model Law should be adopted consistently across jurisdictions in order for it to be effective. Allowing parties to derogate or vary the provisions of the Model Law gives rise to uncertainty and the lack of uniformity in the application of the Model Law. Parties involved may circumvent the mandatory provisions under the applicable law that are meant to provide legal certainty to the ETRs that met the functional equivalent rules of paper-based instruments.

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. The adoption of Model Law will only be beneficial when complemented with a trusted system of accreditation to have a level of assurance that the ETRs created by the system will be given legal recognition as the electronic version of the paper-based counterpart.

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?

Yes, it is important for draft article 13 to meet the non-repudiation effect of the ETR. There may be legal consequences attached to the trusted time-stamping with respect to a transferable document or instrument. Draft article 13 should also be amended to address expiry date of presentation if there is system failure prohibiting retrieval of transmitted electronic record which is not an issue for paper based document presentation.

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.

There are important legal issues on the admissibility of electronic evidence in legal proceedings. Evidence Act should be reviewed to align with the Model Law and provide

legal recognition to electronic transferable records (ETRs).

Draft Article 7 (Legal recognition of an electronic transferable record) – Does legal recognition equate to admissibility of ETRs in the Singapore courts? Should it be addressed within the Model Law / Electronic Transactions Act or separately under the Evidence Act?