



Dear Readers,

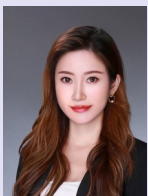
As a consequence of the pandemic, the use of electronic signatures has drastically increased.

This E-Bulletin provides an overview with regard to the legal status of electronic signatures in Singapore.

We appreciate your feedback and look forward to hearing from you.

Best regards,
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SINGAPORE

The Status of Electronic Signatures in Singapore

Electronic signatures have long been recognized in Singapore's law since over a decade ago. However, electronic signatures had not been widely used until recently. Their surge is no doubt precipitated by the covid pandemic, as businesses and individuals turn to e-signatures as an efficient way to execute contracts, especially when the parties' movements are restricted.

Electronic signatures in Singapore are primarily governed by the Electronic Transactions Act (Cap. 88) ("ETA") and the Electronic Transactions (Certification Authority) Regulations 2010. This article will canvass the admissibility of using electronic signatures under Singapore law and how to overcome the risks associated with the usage of electronic signatures.

What constitutes an 'electronic signature'?

The law does not have a definite single definition of what is an electronic signature. The ETA defines the term

"electronic" as the technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities; and "signature" is defined as a method (electronic or otherwise) used to identify a person and to indicate the intention of that person in respect of the information contained in a record.

Owing to the broad definitions and the fact that the ETA is aimed at facilitating electronic transactions, most forms of electronic communication would theoretically fit into the description of an electronic signature, such as:

- a facsimile / scanned signature,
- a typed name at the bottom of an email,
- a digitally drawn manuscript signature,
- a click of an acceptance button on a website,
- biometric data and
- digital signatures produced cryptographically and inserted into the code of a document

Further, electronic signatures are not necessarily computer-based



reproductions of traditional hand-drawn signatures. Section 7 of the ETA provides that an electronic signature satisfies the requirements for a signature if it can provide the identification of the author and confirm that the author approved the contents of the document. For example, in *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* [2005] 2 SLR(R) 651, the court held that the form 'From: "Tan Tian Tye" tian-tye.tan@schenker' constituted the requisite "signature" under the Civil Law Act.

What is a digital signature?

It is pertinent to note that digital signatures are not the same as electronic signatures. A digital signature is a sub-category of an electronic signature, which possesses an additional security layer by using encryption technology.

The ETA defines the 'digital signature' as an electronic signature consisting of a transformation of an electronic record using an asymmetric cryptosystem and a hash function. Such security feature can determine whether the initial electronic record has been altered since the transformation was made. Under the ETA, if a digital signature fulfils certain criteria, it will be deemed as a secure electronic signature.

Admissibility of electronic signatures in Singapore

Section 11 ETA clarifies that contracts can be formed by means of electronic communications. Further, Section 8 of the same act states that where a rule or law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.

This provision effectively gives electronic signatures the same legal status as a physical / wet signature. However, there are exceptions to this principle and the execution by way of electronic signature will not be applicable to:

- the creation or execution of a will;
- the creation, performance or enforcement of an indenture, declaration of trust or power of attorney, with the exception of implied, constructive and resulting trusts;
- any contract for the sale or other disposition of immovable property, or any interest in such property; or
- the conveyance of immovable property or the transfer of any interest in immovable property.

Despite that, Singapore courts have clarified that the fact that the Electronic Transactions Act does not apply to these matters does not mean that e-mail correspondence in relation to such matters cannot be considered to be 'in writing' or that such correspondence cannot constitute a sufficient 'signature' for the purposes of the formality requirements. It should also be noted that the exclusion above is not relevant where there are no legal form requirements.

Presumption on secure electronic signatures under the ETA

Despite being flexible and efficient, electronic signatures are by nature intangible and fragile. It comes with the risks of signatory fraud, unauthorized signature, altered signature and related risks. When the authenticity of the electronic signature is successfully challenged, the disputed contract will be unenforceable. These risks can be minimized by adopting a secure electronic signature (such as the



digital signature), which is a more reliable form of authenticating evidence than the electronic signature.

Under the ETA, both electronic signatures and secure electronic signatures are enforceable and admissible. However, a secure electronic signature is more advantageous as it enjoys the statutory presumption under section 19(2) ETA that such signature is the signature of the person to whom it relates, and it was affixed by that person with the intention of signing and approving the electronic record. If the electronic signature is not a secure one, this presumption will not apply. Without such presumption and in the event of a dispute in relation to the validity of the signature, a party that intends to rely on an electronic signature must produce sufficient evidence to convince the court that the signature was created under conditions that render it trustworthy.

Conditions for a secure signature

This begs the next question of what makes a electronic signature secure under the law. By virtue of section 18(1) ETA, an electronic signature will be treated as a secure electronic signature if, through the application of a prescribed security procedure or an agreed commercially reasonable security procedure:

- it can be verified that the electronic signature (at the time it was made) was unique to the person using it;

- capable of identifying the person;
- created in a manner or using a means under the sole control of the person using it; and
- linked to the electronic record to which it relates (so that if the electronic record was changed, the electronic signature would be invalidated).

In practice, the above conditions for a secure electronic signature can be met through the application of a specified security procedure as prescribed under the Electronic Transactions (Certification Authority) Regulations 2010, or a commercially reasonable security procedure agreed to by the parties involved. In the absence of a commercially reasonable security procedure, the ETA stipulates that a digital signature based on a public key infrastructure as a security procedure can also pass as a secure electronic signature.

Digital signatures as secure electronic signatures

Additionally, the ETA sets out when a digital signature will be treated as a secure electronic signature:

- the digital signature was created during the operational period of a valid certificate and is verified by reference to the public key listed in such certificate; and
- the certificate is considered trustworthy, in that it is an accurate binding of a public key to a person’s identity because:



- (i) the certificate was issued by an accredited certification authority operating in compliance with the regulations made under the ETA;
- (ii) the certificate was issued by a certification authority outside Singapore recognised for this purpose by the Controller pursuant to regulations made under the ETA;
- (iii) the certificate was issued by a department or ministry of the Government, an organ of State or a statutory corporation approved by the Minister to act as a certification authority on such conditions as he may by regulations impose or specify; or
- (iv) the parties have expressly agreed between themselves (sender and recipient) to use digital signatures as a security procedure, and the digital signature was properly verified by reference to the sender's public key.

Thus far in Singapore, only one company is listed as the accredited certification authority, which is Netrust Pte Ltd. The requirements may sound technical and a hassle to comply with, but it should be born in mind that it may be possible for electronic records or signatures to satisfy the requirements for writing or signatures without reliance on the provisions of the ETA. This ultimately hinges on the legal interpretation of whether an electronic form satisfies a particular legal requirement for writing or signature.

Conclusion

As apparent from the above, electronic signatures are legally valid and recognised in Singapore. Nevertheless, before adopting electronic signatures, adequate consideration should be given to other practical matters such as:

- Whether the constitution or board resolutions of either party contain any express restrictions preventing use of electronic signatures;
- If a secure electronic signature should be deployed;
- Costs involved in using a secure electronic signature solution;
- Conflict of laws issue if the document is to be executed in another jurisdiction;
- Whether a registry/authority would accept a document signed electronically.

The Singapore government has announced its intention to mould Singapore into a leading digital economy. To support this effort, it has recently launched a new digital signing service, the "Sign with SingPass" which allows SingPass users to electronically sign contracts and other legal documents. Moving forward, we expect new legislative and regulatory developments to arise from time to time and we will summarize this development in due course.