

# **Impact Of UNCITRAL Model Laws On Electronic Commerce And Electronic Signatures On Singapore's Electronic Transactions Act**

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The UNCITRAL Model Law on Electronic Commerce (“Model Law (EC)”) with Guide to Enactment was passed by General Assembly Resolution 51/162 on 16 December 1996. An additional article 5 bis was adopted in 1998. The UNCITRAL Model Law on Electronic Signatures (“Model Law (ES)”) was adopted on 5 July 2001.

UNCITRAL is the United Nations Commission concerned with the harmonisation and unification of international trade laws so that countries can conduct international trade worldwide with the least impediment and barriers. This is done normally through conventions, model laws and guidelines which are generally accepted worldwide. UNCITRAL has adopted the United Nations Conventions on Contracts for the International Sale of Goods, the Legal Guide on Electronic Funds Transfers, the UNCITRAL Model Law on International Credit Transfers, the UNCITRAL Model Law on International Commercial Arbitration, and others.

A number of countries including their states and provinces have enacted electronic commerce laws based on the Model Law (EC). The 1996 Model Law (EC) is intended to assist governments in enhancing their legislation governing the use of “alternatives to paper-based methods of communication and storage of information” ; it addresses the issue of the “legal value of computer records” and it is intended to ensure “legal security in the context of the widest possible use of automated data processing in international trade”.

The 2001 Model Law (ES) is intended to assist governments to deal with the increasing use of electronic authentication techniques or electronic signatures as substitutes for hand-written signatures. The Model Law (ES) provides “a set of basic rules of conduct for the various parties that may become involved in the use of electronic signatures”.

The Model Law (EC) is intended to create a media-neutral environment – national and international legislation should not discriminate between transactions conducted through a paper medium and transactions conducted electronically. Likewise the Model Law (ES) is intended to create a technology-neutral environment for the use of electronic signatures so long as the technology in use meets the technical security standards of reliability necessary to give legal effect to electronic signatures.

## **SYNOPSIS**

This paper will discuss, analyse and compare the provisions of the Singapore Electronic Transactions Act (“ETA”) with the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures. The paper will look at the extent to which the ETA harmonises with the provisions of the UNCITRAL Model Laws. This is important for Singapore as the UNCITRAL Model Laws are followed or used as legal guidelines by Singapore’s major trading partners worldwide in their national legislation.

The purpose of the ETA is to remove any doubts as to the legal consequences of electronic transactions. The paper will note how the ETA addresses the legal issues arising from relying on electronic evidence and electronic records, the legal status of electronic contracting and the legal standing of digital signatures. Finally the paper will review the scope of the UNCITRAL Model Laws and the ETA in the light of future developments that may be needed to strengthen the legal framework for electronic commerce.

## **TRUSTWORTHINESS**

Section 23 of the ETA recognises that persons relying on a digital signature will also rely on a valid certificate containing the public key of the sender. Sections 25 and 26 provide for strict penalties for the publication of a digital certificate for fraudulent or unlawful purpose; and for falsely representing to a certification authority a person’s identity so as to get a digital certificate suspended or revoked.

These provisions are essential to maintain the security and trustworthiness of digital certificates. Indeed a digital certificate is like an identity card (Singapore citizens have to carry one), the public relies on the identity card to validate the person’s identity.

## **CONCLUSION**

The ETA together with its accompanying regulations and security guidelines is a comprehensive legislation making Singapore “one of the first complete on-line countries”. Even so, the ETA’s role is limited to making evidentiary presumptions on electronic communications, electronic records and electronic signatures. These evidentiary presumptions are subject to rebuttal and to the same common law precedents as conventional commerce.

UNCITRAL has repeatedly pointed out the two Model Laws are limited to minimal guidelines aimed at a broad and neutral approach and States are not prevented from legislating higher standards of compliance and security. Singapore has tried to be more comprehensive in its ETA than the two Model Laws. As a result the ETA has endorsed

digital signatures and established the legal rules and technical standards necessary for a trustworthy public key infrastructure.

Much more remains to be accomplished in the task of harmonising international rules on electronic commerce. The UNCITRAL Working Group on electronic commerce identifies its future work to include : (a) technical alternatives to public key cryptography; (b) legal functions of third-party service providers and certification authorities; and (c) electronic contracting. The ETA and the two Model Laws may become outdated very quickly through changes in technology.

The ETA provides for flexibility by allowing separate contractual agreements (party autonomy) and the enactment of subsidiary regulations as the need arises. Over time, the definitions of “in writing”, a “signature” and a “document” will need to be revised in the ETA and the Model Laws.

*This is not the full LLM Paper.*

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