

# Impact Of OECD Guidelines On Singapore's Policies And Regulations On Electronic Commerce

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## SYNOPSIS

Electronic commerce is borderless; it deals with cross-border transactions. Electronic transactions are paperless and faceless. Electronic commerce cannot work unless there is global co-operation to adopt transparent international rules to ensure that e-commerce transactions are legally binding, are secure and verifiable, and are non-repudiable.

These are the minimum standards necessary to move business-to-business (b2b) electronic commerce. For consumers, or business-to-consumers (b2c) electronic commerce, there are the added concerns of consumer protection and the protection of the privacy of personal data.

Since 1996, Singapore has taken many milestone initiatives to develop the country's e-commerce capabilities. In doing so, Singapore has to make decisions on the key issues affecting electronic commerce.

These are : (a) the legal framework for electronic commerce including intellectual property protection; (b) setting up the public key infrastructure; (c) the ability to contract through digital signatures; (d) the security of information systems; and (e) the need to ensure consumer protection. Overall, the central issue for electronic commerce is *trust*—at national and at international levels.

Singapore has to make choices and decisions that are in line with, or are at least not inconsistent with, international standards and practices. This is to ensure that Singapore's aspirations to be a significant e-commerce hub are not hampered by rules, regulations and technical standards that create barriers to cross-border electronic transactions.

This paper will address the impact of the OECD guidelines on electronic commerce on Singapore. In the process the paper will also discuss Singapore's policies and regulations on electronic commerce in the last five years. Although Singapore is not a member of the OECD, the OECD guidelines are particularly important to Singapore as the members include the major trading partners of Singapore. This paper will conclude with observations on the impact of international organisations on Singapore's development in electronic commerce.

## **THE LEGAL FRAMEWORK FOR ELECTRONIC COMMERCE**

The OECD's Guidelines on electronic commerce discussed early issues like Privacy and Transborder Flows of Personal Data in 1980, the Security of Information Systems in 1992, Cryptography Policy in 1997 and Consumer Protection in 1999.

Singapore was one of the first countries to enact legislation on electronic commerce and electronic signatures in 1998, based largely on the UNCITRAL Model Law on Electronic Commerce 1996. The Electronic Transactions Act (Chapter 88) 1998, as amended in 1999, was ahead of the UNCITRAL Model Law on Electronic Commerce 1996 in its technology-specific provisions on asymmetric cryptosystem and hash function. Many of these Singapore provisions on public key cryptography are included in the recently published UNCITRAL Model Law on Electronic Signatures 2001.

Singapore also amended the Copyright Act (Chapter 63) revised edition 1999 to keep in line with the requirements of WIPO's Copyright Treaty 1996 and WIPO's Performance and Phonograms Treaty 1996. These amendments enhanced copyright protection in the Internet domain for copyright owners.

In September 1998 Singapore acceded to the Berne Convention for the Protection of Literary and Artistic Work. The Computer Misuse Act (Act 19 of 1993) was amended in 1998 to provide for very severe penalties for more classes of security threats to computer systems. The Evidence Act (Chapter 97) was amended in 1996 to accept electronic records as evidence in court proceedings. Internet Access Service Providers and content providers had to comply with an Internet Code of Practice 1997. The Singapore Inland Revenue Authority of Singapore has issued e-guides on the taxation of electronic commerce transactions.

The author believes that Singapore has created a legal framework for electronic commerce that is kept constantly up to date with obligations set by international organisations.

### **THE ELECTRONIC TRANSACTIONS ACT (CHAPTER 88) 1998 (REVISED 1999)**

The Electronic Transactions Act ("ETA") was enacted to spearhead Singapore's development as an e-commerce hub. The ETA gives effect to the following purposes :

- (a) to facilitate electronic communications, electronic commerce and electronic filing of documents;
- (b) to eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements;

- (c) to minimise fraud in electronic commerce including forged electronic records;
- (d) to promote public confidence in the integrity and reliability of electronic records;
- (e) to lend authenticity and integrity to correspondence in any electronic medium and
- (f) to foster the development of electronic commerce through the use of electronic signatures.

The ETA's overall purpose is to promote the development of the legal and business infrastructure necessary to implement secure electronic commerce. To this end, the ETA established the Electronic Transactions (Certification Authority) Regulations 1999, the Security Guidelines for Certification Authorities 1999, and the Information Technology Security Guidelines 1999.

## **CONCLUSION**

Singapore is acutely aware that its domestic electronic commerce infrastructure, legal and regulatory framework and its technical standards must harmonise with those of the major trading countries and with its regional trading partners. This need is compounded by the fact that electronic commerce requires policy and regulatory adaptations in almost all areas of commerce – intellectual property, cross-border taxation, accepted rules of evidence and records, accepted rules of international trade – in addition to the specific security, trust and confidence issues which are raised in this paper.

These issues cannot be addressed simply by following the international guidelines since not all major countries agree on what approach to take. Take, for example, privacy. The events of September 11 have led the United States Congress to pass legislation, signed by President Bush on 26 October 2001, to expand the powers of law enforcement agencies at the expense of the individual's privacy rights.<sup>(30)</sup>

Indeed the EU had to back off from its stringent ban on the cross-border transfer of personal data by issuing a Community Decision on 15 June 2001 to allow the use of standard contractual clauses imposing data protection obligations on the data importer as a way of satisfying the requirements of Articles 25 and 26 of the EU Privacy Directive.<sup>(31)</sup> The International Chamber of Commerce has also issued model contractual clauses to help international businesses.

Electronic commerce is at its developing stage. Rapid changes in information technology, cryptography, and telecommunications will raise new issues and force the review of existing rules and regulations.<sup>(32)</sup> The private sector represented by the International Chamber of Commerce has issued its guidelines on General Usage for International Digitally Ensured Commerce (GUIDEC). Singapore will need to monitor

closely the work of the ICC, the OECD, UNCITRAL, WTO, APEC, WIPO and other international organisations on electronic commerce.

*This is not the full LLM Paper.*

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