

# Technology Regulation

History and Principles

Part II: Electronic Transactions

# In this Video...

1. Further exploring what Zee Kin identifies as a classic example of technology law
2. Taking a law and tech approach towards the Electronic Transactions Act and related cases

# The Electronic Transactions Act

Electronic Transactions Act

Status: Current version  
as at 31 Aug 2021

Electronic Transactions Act ...

Table of Contents

Electronic Transactions Act  
(CHAPTER 88)

Long Title

Part I PRELIMINARY

☐ 1 Short title  
☐ 2 Interpretation  
☐ 3 Purposes and construction  
☐ 4 Excluded matters  
☐ 5 Party autonomy

Part II ELECTRONIC RECORDS, SIGNATURES  
AND CONTRACTS

☐ 6 Legal recognition of electronic records  
☐ 7 Requirement for writing  
☐ 8 Requirement for signature  
☐ 9 Retention of electronic records  
☐ 10 Provision of originals  
☐ 11 Formation and validity of contracts  
☐ 12 Effectiveness between parties  
☐ 13 Time and place of despatch and receipt  
☐ 14 Invitation to make offer  
☐ 15 Use of automated message systems for  
contract formation  
☐ 16 Error in electronic communications

Timeline ▾ Subsidiary Legislation ☒ Amendment Annotation

Actions ▾

## ELECTRONIC TRANSACTIONS ACT

### (CHAPTER 88)

(Original Enactment: Act 16 of 2010)

REVISED EDITION 2011  
(31st December 2011)

An Act to provide for the security and use of electronic transactions, to implement the United Nations Convention on the Use of Electronic Communications in International Contracts adopted by the General Assembly of the United Nations on 23rd November 2005, to adopt the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law on 13 July 2017 and to provide for matters connected therewith.

*[Act 5 of 2021 wef 19/03/2021]*

[1st July 2010]

### PART I

#### PRELIMINARY

**Short title**

1. This Act may be cited as the Electronic Transactions Act.

**Interpretation**

2.—(1) In this Act, unless the context otherwise requires —

“addressee”, in relation to an electronic communication, means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an

# The ETA

- What “transactions” does it apply to?
  - Important carve outs for wills, trusts, real property (s 4)
  - But see also Civil Law Act, s 6
- Section 3: “facilitate electronic commerce”, communications, filing, public confidence, etc
- Sections 6 – 8: electronic records, signature, writing, treated same as ‘non-electronic’ (functional equivalence)
- Sections 11 – 16: formation of contracts not undermined **solely** because of electronic means (including automated message systems defined in s 2)
- **Did we really need to say this out loud?**

# The ETA's legislative intent

**The advent of e-commerce and the increasing use of the digital medium have created some novel legal issues where there are yet no clear answers. ... The Electronic Transactions Bill aims to address these important issues and to create the legal framework for e-commerce transactions in Singapore.**

First, on electronic contracts in general. **While rules on the formation of contracts are clear in the physical world, there are significant ambiguities in the electronic world.** There is therefore a need to enact legislative provisions to clarify the rules of formation of electronic contracts. Part IV of the Bill clarifies that contracts can be made electronically. It also deals with the issues of time and place of sending and receipt of electronic messages.

**Q: What are these ambiguities and how did they arise? (Consider the big question)**

# The ETA's legislative intent

**Secondly, on electronic records and signatures. Part II of the Bill clarifies that electronic signatures have the same legal binding effect as that of written signatures.**

Thirdly, on secure electronic records and signatures. **We recognise that in the digital world, there is no face-to-face interaction. As a result, issues concerning identity, authenticity and integrity arise.** One solution that has been gaining popular support is the digital signature. A digital signature, when affixed to an electronic document, has two essential properties. It confirms that a document has not been tampered with since the time the signature was fixed. It also identifies the person who fixed the signature. **Traditional hand-written signatures do not perform these functions with the same degree of certainty.** It is therefore justifiable to afford some evidentiary presumptions on digital signatures and the documents on which they are affixed, if these signatures are created in accordance with a secure procedure. The Bill provides for this legal effect.

# The ETA's legislative intent

It is essential for the growth of a national information infrastructure that we manage the exposure of network service providers to the risks of liabilities for third party content. **For example, an Internet Service Provider (ISP) should not be held liable for objectionable contents or defamatory statements on the thousands of web sites that are accessed daily, and over which the ISP has no control.**

Clause 10 of Part III of the Bill provides that **a network service provider is not subject to criminal or civil liability for third party material for which the provider merely provides access.** Where network service providers engage in activities which are indistinguishable from those of common carriers such as telephone companies and post offices, they should be given the assurance that they will be treated in the same way in respect of such activities. **The clause, however, will not ... affect any obligation founded on contract or any obligation imposed under any written law or by a court to remove, block or deny access to any material.**

Network service providers will of course continue to be liable for their own content, or third party content that they adopt or approve of.

# Key Points

- Why would we need, or want, special laws for Electronic Transactions?
- How do we begin to think about this question?
- Why are ETs special?
- What's wrong with the law?
- What's wrong with the tech?



# Broader Context

- ETA is derived from UN model law for electronic commerce (1996)
- Also relevant is the Model Law for Electronic Transferable Records, which Singapore only recently adopted
- The UN documents are built on **three key principles** that centrally aim to promote “equal treatment” between paper and electronic means
  - Non-discrimination
  - Functional equivalence
  - Tech neutrality
- These are well-articulated and justified principles that inform many other areas of technology law

# Case Study – online mistake

- *Chwee Kin Keong v Digilandmall* [2005] – you know this case
- **Human** typo on website reduced price from \$3,854 to \$66
- Appellants bought a huge number of printers; company refused to honour
- **How did the court handle this?**
- Long discussion of principles of mistake, including in equity
- Did the ETA help or clarify anything?
  - That is, would the court have reasoned differently if we had no ETA?

# Chwee Kin Keong

## Contracts made through the Internet

29 It is common ground that the principles governing the formation of written or oral contracts apply also to contracts concluded through the Internet. **In the present case, it is not in dispute that prima facie a contract was concluded each time an order placed by each of the appellants was followed by the recording of the transaction as a “successful transaction” by the automated system.** The system would also send a confirmation e-mail to the person who placed the order within a few minutes of recording a “successful transaction”.

# SM Integrated v Shenker

**F:** Advanced discussions for **corporate lease**; one party tried to pull out at the last minute, other side said had already accepted via email. **Q: Were emails sufficient “writing” under s 6(d) of the Civil Law Act?**

76 **Whilst the [ETA] does make it plain that electronic records will be adequate to satisfy legal rules relating to writing and signature in most commercial matters, its conservative approach in not extending these provisions to contractual matters falling within s 6 of the CLA does not mean that, as a matter of law, electronic means of communication cannot satisfy the requirements of s 6. The ETA does not change the common law position in relation to s 6 of the CLA. Whether an e-mail can satisfy the requirements for writing and signature found in that provision will be decided by construing s 6(d) of the CLA itself and not by blindly relying on s 4(1)(d) of the ETA.**

85 I therefore find that the e-mail correspondence which constituted the memorandum of the contract (as specified in [\[73\]](#) above) was “in writing” for the purpose of s 6(d) of the CLA. **I am pleased to be able to come to this conclusion which I think is dictated by both justice and common sense since so much business is now negotiated by electronic means rather than by letters written on paper and, in the future, the proportion of business done electronically will only increase.** I think that the ordinary man in the street, who not only conducts business via computer but who is being encouraged to use technology in all areas of life and to become more and more technologically proficient, would be amazed to find that the law would not recognise a contract he had made electronically even though all the terms of the contract had been agreed and the parties were perfectly *ad idem*.

# Key Takeaways

- Technology in practice often just requires law to be clarified in **application**, might not need any real 'extension'
- **Distinguish questions of *applicability* from uncertainties in *application***
  - Academics vs practitioners worry about different things
  - Almost always possible to spot a theoretical issue (even if there is no problem in practice)
  - Some purely theoretical issues are *still* worth examining, as practical issues
- KIV for our discussions on **AI regulation/liability**
  - See Vincent's Ooi's discussions on AI contracting if interested
- Neither is necessarily less worrisome than the other
  - Uncertainties in application were what prompted the ETA

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