

30 July 2009

Legislation and Law Reform Division
Attorney General's Chambers
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#05-04 The Adelphi
Singapore 179803



BY E-MAIL & POST

Dear Sirs

REVIEW OF THE ELECTRONIC TRANSACTIONS ACT (“ETA”): PROPOSED AMENDMENTS 2009

Feedback on proposed amendments

1. In response to the consultation paper issued by the Info-communications Development Authority of Singapore (“**IDA**”) and the Attorney-General’s Chambers (“**AGC**”) on the proposed amendments to the ETA, we submit that:
 - (a) amendments should be made to the list of excluded transactions in the First Schedule of the ETA (“**Excluded Transactions**”), so as to:
 - (i) carve out from the list of Excluded Transactions, documents of title or documents evidencing title for securities accepted or designated by The Central Depository (Pte) Limited (“**CDP**”) or its nominee for deposit, clearing or book-entry settlement; and
 - (ii) exclude from the list of Excluded Transactions, transactions on a regulated exchange;
 - (b) the Instruments (Formalities) Bill 2001 be en-acted.

Background

2. As the central securities depository of Singapore, CDP accepts for deposit, documents evidencing title to securities that are listed and traded on Singapore Exchange Securities Trading Limited (“**SGX-ST**”). Although CDP has the power under Section 130B(3) of the Companies Act to accept wholly electronic securities as “*designated securities*”, CDP’s power to accept wholly electronic securities which document evidencing title is in a deed form is fettered by:
 - a. Section 4(1) of the ETA read with the list of Excluded Transactions; and
 - b. the delay in the passing of the Instruments (Formalities) Bill 2001.

Section 4(1) of the ETA

3. Section 4(1) of the ETA read with the list of Excluded Transactions explicitly excludes electronic indentures, which are defined to mean deeds made between two or more parties, from being valid and enforceable under the ETA. Although this is not an express exclusion of deed polls which may be signed by one party, it creates uncertainty as to whether CDP can treat electronic deed polls (for example, global warrants¹) as being valid.

Documents of title and transactions on a regulated exchange

4. The uncertainty is compounded by the inclusion of “*documents of title*” and “*transactions on a regulated exchange*” in the list of Excluded Transactions.
5. We note that the rationale for excluding documents of title² was because UNCITRAL was of the view that the need for ensuring the uniqueness of such documents goes beyond simply ensuring the equivalence between paper and electronic forms.
6. Should CDP be permitted to accept electronic documents of title/documents evidencing title in deed form, there are measures which CDP can adopt or there are other factors present which help to preserve the element of singularity of the document of title/document evidencing title as well as to reduce fraud:
 - a. time-stamping the document of title/document evidencing title;
 - b. the receipt of the document of title/document evidencing title by CDP is usually preceded by a listing application submitted by the issuer to SGX-ST (insofar as these securities are listed). The listing application would identify the securities to be listed.
7. IDA and AGC have proposed that “*transactions on a regulated exchange*” as found in Article 2(1)(b)(i) of the United Nations Convention on the Use of Electronic Communications in International Contracts be included as a class of Excluded Transactions in the First Schedule of the ETA, on the reasoning that “*domestically, it is expected that the use of electronic³ communication would be governed by specific legislation where appropriate*”.
8. In Singapore, there is no specific legislation governing electronic communications for transactions on regulated exchanges. In addition, given that CDP accepts for deposit, documents evidencing title prior to the listing and/or trading of the relevant securities on SGX-ST, these are technically not “*transactions on a regulated exchange*” and may not be within the class of transactions that UNCITRAL intended to refer to.

¹ A global warrant is a deed issued by a structured warrant issuer showing the holder’s entitlements to the number of warrants stated therein.

² United Nations Convention on the Use of Electronic Communications in International Contracts, pg. 35, paragraph 3, under the heading of “*Negotiable instruments, documents of title and similar documents.*”

³ Although the List of Excluded Transactions in the First Schedule 1 of the ETA refers to documents of title, and not documents evidencing title, we are of the view that both documents of title and documents evidencing title in respect of securities accepted for deposit by the Depository should be carved out.

9. In view of the foregoing, we propose that:
 - a. documents of title or documents evidencing title for securities accepted or designated by CDP or its nominee for deposit, clearing or book-entry settlement be carved out from “*documents of title*” under the list of Excluded Transactions; and
 - b. “*transactions on a regulated exchange*” be left out from the list of Excluded Transactions.

Instruments (Formalities) Bill 2001

10. The Instruments (Formalities) Bill sought to reform the law relating to deeds but this has not yet been passed.
11. The uncertainty regarding the validity of electronic deeds can be reduced if the Instruments (Formalities) Bill is passed, so as to abolish the requirements for deeds to be made on parchment and to be sealed.
12. It was stated in the consultation paper that there is no proposal to amend the ETA to provide for electronic sealing as there is no consensus on whether and how to allow for electronic sealing. We submit that the requirement for sealing in an electronic deed can be resolved if the law provides that sealing is deemed effected if parties express their intention of sealing on the document itself.
13. Other safeguards which can be taken to reduce the risks associated with electronic transmission of electronic documents of title/documents evidencing title in deed form are described in paragraph 6 above.

Legislative reform sought

14. We wish to seek the following legislative reforms:
 - a. amendments to the ETA, in the manner shown in Appendix 1; and
 - b. en-actment of the Instruments (Formalities) Bill 2001.

Benchmarking against International Practices

15. The exchanges/depositories in jurisdictions such as Australia, Korea, Stuttgart and Frankfurt credit warrants based on electronic submission of global warrants. It is likely that the laws in these jurisdictions recognize electronic deeds as well.
16. Permitting CDP to accept electronic documents of title or documents evidencing title would also be in line with the trend of dematerialization in the international securities industry.

Impact if CDP’s submissions are not accepted

17. If CDP’s submissions are not accepted, CDP may face practical difficulties in accepting for deposit securities which document of title / document evidencing title is



in a deed poll form and which is being transmitted electronically. This would affect the ability of SGX-ST in attracting issuers which operate or are used to laws which give recognition to electronic deeds/documents of title and would ultimately unduly affect Singapore's ability in being a leading financial center.

If you have any query on the foregoing, please do not hesitate to contact my colleague, Ng Ee San at DID: 6236 8257 or email at: esn@sgx.com.

Yours faithfully


Joyce Fong
Head, Legal & Governance
General Counsel and Company Secretary
Singapore Exchange Limited

cc.

1. Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079119
Attention: Mr Neo Boon Sim
Head, Markets & Clearing Houses Division
Securities and Futures Supervision Department
2. The Accounting and Corporate Regulatory Authority
10 Anson Road #05-01/15
International Plaza
Singapore 079903
Attention: Ms Juthika Ramanathan, Chief Executive Officer

Appendix 1: Proposed amendments to the First Schedule of the Electronic Transactions Act

FIRST SCHEDULE

Section 4

MATTERS EXCLUDED BY SECTION 4

| <i>Provision</i> | <i>Matter</i> |
|------------------|--|
| 2. Part II | <p>Negotiable instruments, documents of title <u>(excluding documents of title or documents evidencing title with regard to securities accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement)</u>, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money</p> <p>[UN Art 2(2)]</p> |
| 6. Part II | <p>Transactions on a regulated exchange [UN Art 2(1)(b)(ii)]</p> |

“**Depository**” has the same meaning as in Section 130A of the Companies Act.