
JOINT IDA-AGC REVIEW OF ELECTRONIC TRANSACTIONS ACT PROPOSED AMENDMENTS 2009 (REPORT)

**Submission by the StarHub Group to the Attorney-
General's Chambers**

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A. Statement of Interest

- 1.1 StarHub Ltd is a Facilities Based Operator (“FBO”) in Singapore, having been awarded a licence to provide public basic telecommunication services (“PBTS”) by the Telecommunications Authority of Singapore (“TAS”) (the predecessor to IDA) on 5 May 1998. StarHub Ltd participated in the Network Company RFP of the Next Generation National Broadband Network (“NGNBN”) as part of the Infinity Consortium. StarHub Ltd also participated in the Operating Company RFP of the NGNBN. Nucleus Connect Pte Ltd, a wholly-owned subsidiary of StarHub Ltd, incorporated on 14 April 2009, was appointed as the Operating Company of the NGNBN.
- 1.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services (“PCMTS”) by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.
- 1.3 StarHub Ltd acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999.
- 1.4 In July 2002, StarHub Ltd completed a merger with Singapore Cable Vision to form StarHub Cable Vision Ltd (“SCV”). SCV holds a FBO licence and offers broadband and cable TV services.
- 1.5 StarHub Online Pte Ltd is a wholly-owned subsidiary of StarHub Ltd. StarHub Online Pte Ltd was issued a licence to provide Public Internet Access Services in Singapore on 22 February 2005.
- 1.6 This submission represents the views of the StarHub group of companies, namely, StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd, StarHub Online Pte Ltd and StarHub Cable Vision Ltd.

B. Introduction

StarHub welcomes the opportunity to provide our comments on:

- a. the proposed amendments to the Electronic Transactions Act (Cap. 88) (“ETA”), as set out at Annex A (“Proposed Bill”) of the Report;
- b. the proposed amendments to the Electronic Transactions (Certification Authority) Regulations, as set out at Annex B of the Report; and
- c. the Compliance Audit Checklist, as set out at Annex C of the Report.

StarHub notes that the public consultation on the ETA was carried out in three stages in 2004 and 2005. Together, the three stages covered the following issues:

- a. electronic contracting issues and the United Nations Convention on the Use of Electronic Communications in International Contracts (“UN Convention”);
- b. the transactions excluded from application of the ETA;
- c. the regulation of certification authorities;
- d. e-Government issues; and
- e. the exemption of liability for network service providers.

However, the issue concerning the exemption of liability for network service providers is still under consideration by MICA and AGC and a separate document on this issue will be published in due course.

StarHub is pleased to provide our comments to the proposed amendments to the ETA. This is to provide further clarity on the application of some provisions of the ETA. We have provided our comments in the following section.

C. Detailed Comments

1. Section 16 of the Proposed Bill - Error in electronic communications

Section 16 of the Proposed Bill allows a person who makes an input error to withdraw the portion of the electronic communication containing the input error if the automated message system receiving the electronic communication did not provide the person with an opportunity to correct errors.

However, the term “input error” is not defined and this provision is susceptible to abuse by persons wishing to repudiate disadvantageous transactions or nullify what would otherwise be valid legal commitments. The Explanatory Notes on Article 14 of the UN Convention on the Use of Electronic Communications in International Contracts (on which section 16 is based) states, at page 76, that “article 14 does not require a determination of the intent of the party who sent the allegedly erroneous message”. Instead, the onus is placed on the operator of the automated message system to offer means for correcting errors. According to the Explanatory Notes, if the operator of the automated message system fails to offer means for correcting errors, it is reasonable to make the operator bear the risk of errors being made in electronic communications exchanged through the automated message system.

However, this runs contrary to the entire premise of Article 14 and Section 16, which is to mitigate the effects of unintended errors. Parties should only be allowed to withdraw portions of their electronic communications where such portions are proven to be unintended or mistaken. This would reduce the scope for abuse of section 16. Therefore, we propose that “input error” be defined to make specific reference to the erroneous party’s subjective intentions when the electronic communication was made. For instance, “input error” could be defined as follows:

“a mistake in entering data, such that the data entered differs from that which was subjectively intended by the natural person at the point when the data was entered”

2. Paragraph 8 of Schedule 3 of the Proposed Bill – Publication for fraudulent or unlawful purpose

Paragraph 8 of Schedule 3 of the Proposed Bill provides that it is an offence for any person to knowingly create, publish or otherwise make available a certificate for any fraudulent or unlawful purpose. However, in light of the definition of “certificate” contained in paragraph 1 of Schedule 3 of Proposed Bill, the term “certificate” appears to refer only to certificates properly issued by certification authorities. There is thus some uncertainty as to whether paragraph 8 encompasses the creation, publication or making available of false/fraudulent certificates by persons other than certification authorities.

It would be best if paragraph 8 could be clarified to make express reference to false/fraudulent certificates created/published by persons other than certification authorities. For instance, paragraph 8 could be amended as follows:

“Any person who knowingly creates, publishes or otherwise makes available a certificate (including a false or fraudulent certificate) for any fraudulent or unlawful purpose shall be guilty of an offence...”

3. Paragraph 24 of Schedule 3 of the Proposed Bill – Control of private key

Paragraph 24 of Schedule 3 of the Proposed Bill provides that a subscriber has a duty to exercise reasonable care to retain control of and prevent unauthorised disclosure of his private key. It appears that the intent of this provision is to make it easier for persons who rely on the subscriber’s digital signature to claim against the subscriber in the event that the subscriber’s private key is abused by unauthorised persons.

If this is indeed the intent of paragraph 24, we propose that paragraph 24 further specify that a subscriber owes a duty of care to all who may reasonably rely on the subscriber’s digital signature in accordance with paragraph 5 of Schedule 3. Otherwise, persons who have reasonably relied on the subscriber’s digital signature may still face considerably difficulty in mounting claims in negligence against the subscriber.