

**A modern legal framework to enable global trade:
the new legislation on arbitration and on electronic transactions**



Singapore's new legislation on arbitration and electronic transactions



JEFFREY W T CHAN, *Senior Counsel*
Deputy Solicitor-General
SINGAPORE



SINGAPORE

- Independent sovereign developing nation
- Parliamentary democracy
 - Small: 712.4 sq Km
 - Population: 5,312,400 (2012)
- Gained independence on 9 August 1965
- Rapid economic growth
 - GDP: \$326,832,4 million (2011)
- Commercial hub of South-East Asia
- Open economy
 - heavily dependent on world trade
- Need to constantly upgrade infrastructure.



ARBITRATION IN SINGAPORE

- Needed service for commercial relations
- Possible growth area for national economy
- 2 separate regimes:
 - International Arbitration Act (Chapter 143 A)
 - Applies to international arbitrations or when parties agree to arbitrate under its provisions
 - Aligned with UNCITRAL Model Law on International Commercial Arbitration
 - Arbitration Act (Chapter 10)
 - Applies to domestic arbitration
- Suggestions made to consolidate both Acts.

ARBITRATION IN SINGAPORE

- Actively promoted by Government and legal community
- Maxwell Chambers – purpose-built arbitration facility
- Attractive tax incentives for arbitrations in Singapore
- “Arbitration-friendly” judiciary
 - Particularly for international commercial arbitrations.



ELECTRONIC COMMERCE

- **Important vehicle for economic growth**
 - facilitates global commercial relations without need of a hinterland
- **Need to build technical and legal infrastructure**
- **Internationally harmonized laws crucial in e-commerce across borders.**

LEGAL INFRASTRUCTURE FOR ELECTRONIC COMMERCE

- **1996 – UNCITRAL Model Law on Electronic Commerce (MLEC)**
- **2001- UNCITRAL Model Law on Electronic Signatures (MLES)**
- **1998: Electronic Transactions Act enacted**
 - **Singapore is first state to implement the UNCITRAL Model Law on Electronic Commerce**
 - Provides for “functional equivalence” with paper based transactions
 - Provides code for e-commerce transactions
 - **Removes uncertainty over enforceability of transactions entered into electronically.**

DEVELOPMENTS SINCE 2001

- **Inconsistent application of the MLEC**
 - e.g. EU Directive 2000/31/EC (*“Directive on Electronic Commerce”*)
- **Rapid development in technology and practice**
 - Especially growth of Internet
- **MLEC provisions increasingly impractical**
- **2001 – UNCITRAL commences work on treaty on electronic contracting**
 - **UN Convention on the Use of Electronic Communications in International Trade**
 - (*“The UN Electronic Communications Convention”*)

The Electronic Communications Convention

- **Updates MLEC in light of technological changes**
- **Completed and adopted by UNCITRAL in July 2005**
- **Adopted by UN General Assembly in November 2005**
- **Singapore was original signatory and first state to ratify**

KEY PROVISIONS

- **Application and party autonomy**
- **Electronic originals**
 - **Concept of “data messages”**
 - **Criteria for recognition as a signature**
- **Time and place of dispatch**
- **Website sales**
- **Automated transactions**
- **Errors.**

ELECTRONIC TRANSACTIONS ACT (ETA)

- Enacted in 1998 to implement the MLEC
- 2010 –repealed and re-enacted to align with the UN Electronic Communications Convention
 - Wide public consultation
 - Deliberate policy to avoid different regimes for paper-based and electronic contracts
- Excluded transactions
 - Listed : *wills, negotiable instruments etc*
 - parties can agree to exclude
- New criteria for electronic signatures
 - Need for “reliable” method
- Digital signatures –
 - Authentication by certification authority
 - Identity and intention for digital signatures on electronic records presumed.

CONCLUSION

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AGC
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