

Court Support for Electronic Signatures in Singapore.

The Electronic Transactions Act (ETA) in Singapore provides recognition for electronic documents and signatures in accordance with its provisions. In addition, case law in Singapore has provided additional support for the recognition of electronic records and signatures outside of the ETA. This effectively gives e-signing of documents 2 bites at the cherry - one under the ETA and another pursuant to case law.

The Courts have expressly recognised the realities of conducting business electronically in modern times. By endorsing a purposive approach, that emphasizes substance over form, the Courts have paved an easier path for the recognition of e-signatures under case law.

The Infocomm Media Development Authority (IMDA), a government regulator, is conducting a consultation on the ETA with the intention of reducing obstacles to the use of electronic signatures and records. The consultation recognises that e-signatures can be concluded in various forms including utilising a web based platform and signing on a touch screen.

Rulings that support documents electronically signed with DocuSign

SM Integrated Transware Pte Ltd v Schenker

Singapore (Pte) Ltd, [2005] 2 SLR(R) 651 (High Court, Singapore)

SM Integrated Transware is the seminal case in Singapore that provides for the recognition of signatures in electronic form. In particular, it lays out the principle that a signature does not need to be handwritten.

An electronic signature is valid so long as the method of signing demonstrates the signatory's intent to "authenticate" the document. Therefore, recognizing that signatures are a matter of substance over form.

In this case, the parties were negotiating an agreement for logistics services that included the lease of a warehouse. During negotiations, the Plaintiff (the lessor) emailed a draft agreement to the Defendant containing, amongst other things, the terms of the agreement. The Defendant responded via email that the draft appeared satisfactory save for minor changes to be made. The Defendant subsequently decided not to proceed with the lease of the warehouse, and the Plaintiff sued the Defendant for repudiatory breach of the agreement.

Under the Civil Law Act (our equivalent to the statute of frauds), no action may be brought against a contract for the sale or disposition of immoveable property (including the lease agreement for the warehouse) unless it is evidenced in writing and signed. The Defendant, seeking to release itself of its obligations under the contract, argued that the agreement was unenforceable because it was not made in writing and signed. The Plaintiff disagreed. As all correspondence was conducted electronically over email, the case turned on whether the legal requirements of writing and signature had been satisfied in electronic form.

The Court found that the legal requirements of writing and signature had been satisfied electronically. An email was sufficient to constitute a written record, and a signature appearing in an email would be valid. The Court further found that there was no real distinction between a signature in typewritten form (i.e. on paper) and a signature that was been typed into an email. Therefore, signatures need not be handwritten to satisfy the requirements under the Civil Law Act.

What further stands out was the Court's view on the realities of doing business. As much business is being conducted electronically, the Court found that recognising electronic means of concluding agreements was a matter dictated by both justice and common sense. It expressed incredulity that a different conclusion could have been arrived at:

"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."

Joseph Mathew and another v Singh Chiranjeev and another

[2010] 1 SLR 338 (Court of Appeal, Singapore)

The highest Court in Singapore (i.e. the Court of Appeal) expressly approved of the principles set out in *SM Integrated Transware*.

Joseph Mathew involved an option for the sale of residential property. The prospective buyers made an offer accompanied by a cheque of SGD 5,000 as consideration for the option to purchase the property. The owners of the property agreed to the sale over email and instructed their agent to deposit the cheque. However, the owners did not sign the option instrument and subsequently sought to get out of the deal.

Under the Civil Law Act (mentioned above), an option to purchase property must be in writing and signed to be enforceable. In endorsing the principles in *SM Integrated Transware*, the Court held that the email response from the owners was sufficient to satisfy the legal requirements. The option was therefore concluded electronically and enforceable.

Wee Soon Kim Anthony v Lim Chor Pee and another

[2005] 4 SLR(R) 367 (High Court, Singapore)

While the cases above involved matters under the Civil Law Act, this case involved the Legal Profession Act and the requirement for an agreement with a client in respect of lawyers' fees to be made in writing and signed by the client.

The parties had exchanged emails in relation to an agreement on lawyers' fees. The Court recognised that the exchange of emails was sufficient to satisfy the requirement for an agreement to be in writing and signed.

Ang Bee Yian v Ang Siew Fah

[2019] SGHC 178 (High Court, Singapore)

This case involved a dispute between sisters over the repayment of monies and interest in property. The Defendant claims that the action was time barred under the Limitation Act. The Plaintiff sought to rely on the acknowledgment of the Defendant's debt which restarts the limitation period. Under the Limitation Act, such an acknowledgment must be made in writing and signed by the Defendant.

The Court recognised that SMS messages sent by the Defendant was sufficient to constitute written and signed acknowledgments by the Defendant of the debt, and the Plaintiff's actions were not time barred as a result.

Other cases

The case of *SM Integrated Transware* has been cited with approval in 3 other cases in Singapore for this proposition¹. The Court of Appeal case of *Joseph Mathew* has similar been cited with approval in 2 other cases². The principles in *SM Integrated Transware* are well established in Singapore.

E-Signature Consultation Paper

On 27 June 2019, the IMDA issued a consultation paper to review the provisions of the ETA. The consultation paper reaffirms the need for the ETA to remain relevant in the digital economy. The IMDA is currently reviewing matters that are currently excluded by the First Schedule of the ETA with a view to enable more transactions to be covered by the ETA. The consultation paper affirms that an electronic signature can be applied in various ways including

- (i) typing their name into a contract;
- (ii) electronically pasting their signature in the form of an image;
- (iii) accessing a contract on a web-based platform and clicking to have their name inserted into the contract; and
- (iv) using a finger or pen to sign their name on a touchscreen.³

Other examples of where the Government has recognised the use of e-signatures

Currently, the Singapore Land Authority's (SLA) Electronic Lodgment System allows for electronic signing of certain instruments such as caveat and discharge of mortgage via Netrust Tokens (which are unique password protected electronic signature of approved individuals such as solicitors).

For discharge of mortgage instruments, the discharging bank can execute these instruments if their authorised signatories have their own tokens - otherwise, solicitors can be authorised to execute these instruments on clients' behalf. For these few instruments, the requirement for original signatures has been dispensed with.

More broadly though, while the Inland Revenue Authority of Singapore does require business to keep records of rental agreements signed by both landlord and tenant as proof of rental income and contracts / agreements signed with customers, it does not expressly require such agreements to bear wet-ink signatures or any particular form of electronic signature.

This is important as Section 25 of the ETA provides that where any public agency that, pursuant to any written law

- (a) accepts the filing of documents, or obtains information in any form;
- (b) requires that documents be created or retained;
- (c) requires documents, records or information to be provided or retained in their original form;...

it may, notwithstanding anything to the contrary in such written law, carry out that function by means of electronic records or in electronic form, subject to any requirements the public agency may specify in relation to

- (a) the manner and format in which such electronic records shall be filed, created, retained, issued or provided;
- (b) where such electronic records have to be signed, the type of electronic signature required (including, if applicable, a requirement that the sender use a particular type of secure electronic signature);
- (c) the manner and format in which such signature shall be affixed to the electronic record, and the identity of or criteria that shall be met by any specified security procedure provider used by the person filing the document;
- (d) such control processes and procedures as may be appropriate to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- (e) any other required attributes for electronic records or payments that are currently specified for corresponding paper documents.

This document is meant to help the reader understand general principles of electronic signatures. This document is for educational purposes only and is not intended to serve as legal advice and should not be a substitute for the reader seeking legal advice from a licensed attorney in your jurisdiction.



Visit the DocuSign E-Signature Legality Guide to learn about current electronic signature laws, local legal systems, and technology preferences for countries around the world.

Notes

- 1 Deutsche Bank AG v Chang Tse Wen and others, [2010] SGHC 125 (Electronic Discovery); Kim Eng Securities Pte Ltd v Tan Suan Khee, [2007] 3 SLR(R) 195 (Acknowledgement of debt); Tiananmen KTV (2013) Pte Ltd and others v Furama Pte Ltd, [2015] 3 SLR 433 (lease agreement);
- 2 Hu Lee Impex Pte Ltd v Lim Aik Seng (trading as Tong Seng Vegetable Trading), [2013] 4 SLR 176; Chew Ai Hua, Sandra v Woo Kah Wai and another (Chesney Real Estate Pte Ltd, third party), [2013] SGHC 120; Woo Kah Wai and another v Chew Ai Hua Sandra and another appeal, [2014] SGCA 41; (These cases involve the sale or disposition of immoveable property)
- 3 Footnote 28 of the consultation paper.

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DocuSign helps organizations connect and automate how they prepare, sign, act on, and manage agreements. As part of the DocuSign Agreement Cloud, DocuSign offers eSignature: the world's #1 way to sign electronically on practically any device, from almost anywhere, at any time. Today, more than 500,000 customers and hundreds of millions of users in over 180 countries use DocuSign to accelerate the process of doing business and to simplify people's lives.

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