

Technology, Media and Telecommunications

Proposed Changes to Electronic Transactions Act to Allow Digitalisation of Trade Documents and Other Key Items

Introduction

As documents and instruments continue to progress along the path towards digitalisation, Singapore is taking steps to facilitate the digitalisation of categories of documents which have thus far been subject to requirements of physical form. This includes key trade documents such as bills of lading, as well as other important documents such as Lasting Powers of Attorney ("**LPAs**").

In Singapore, the Electronic Transactions Act ("**ETA**") is the primary legislation which provides legal certainty for digital transactions and puts in place a framework for secure electronic signatures. On 4 January 2021, the Electronic Transactions (Amendment) Bill 2021 ("**Amendment Bill**") had its first reading in Parliament. The Amendment Bill seeks to amend the ETA to adopt – with modifications – the UNCITRAL Model Law on Electronic Transferable Records ("**Model Law**"). This would allow the use of digital documentation with international ports and reduce the reliance on hard copy trade documents.

The Amendment Bill is part of a wider and ongoing initiative by the Government to review and support the digitalisation of various types of instruments or transactions. In this Update, we take a look at the key provisions introduced in the Amendment Bill, as well as the changes which may be subsequently implemented following further framework enhancements.

Electronic Transactions Act

Amongst its purposes, the ETA aims to facilitate electronic commerce and electronic filing of documents. It removes uncertainty over writing and signature requirements by establishing legal recognition of electronic records in specified circumstances, and also establishes uniformity of rules, regulations and standards regarding the authentication and integrity of electronic records.

However, certain matters are currently excluded from the scope of the ETA, as set out in its First Schedule. These include:

- (a) Item 2: Trade documents such as negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading and warehouse receipts; and
- (b) Item 3: The creation or declaration of trust or power of attorney.

Technology, Media and Telecommunications

The Amendment Bill seeks to delete Item 2 from the First Schedule. The Amendment Bill also states that the other matters in the First Schedule will be deleted when the legislative and administrative frameworks supporting the digitalisation of these other items are ready to be enacted or implemented.

Trade Documents

Currently, most of maritime trade involves the use of physical bills of lading, which can sometimes run up to hundreds of pages for a single transaction. Such documentation and processing make up a significant portion of shipping costs. Digitalisation in this area would thus lead to faster processing, lower costs, and lower risks of fraud.

To facilitate the digitalisation of trade documents, the Government has been developing a Networked Trade Platform, which will allow for electronic exchanges of documents needed for import and export, and has been working with development partners on title transfer capability in relation to electronic bills of lading. In line with this, the Amendment Bill and the adoption of the Model Law establish an internationally harmonised legal framework for the recognition of electronic records of such trade documents.

The key provisions of the Amendment Bill relating to the digitalisation of trade documents include the following:

- (a) Section 16A sets out the relevant definitions from the Model Law, including "electronic record", "transferable document or instrument", "bill of exchange", "bill of lading" and "promissory note". A transferable document or instrument refers to a document or an instrument issued on paper that entitles the holder to claim the performance of the obligation indicated and to transfer the right to performance of the obligation indicated through the transfer of that document or instrument, and includes a bill of exchange, a promissory note and a bill of lading.
- (b) Section 16F provides that an electronic transferable record satisfies any requirement to be in writing if it is accessible so as to be usable for subsequent reference.
- (c) Section 16G to section 16L provide functional equivalence rules and set out the legal requirements for electronic transferable records in relation to:
 - (i) Electronic signatures;
 - (ii) Transferable documents or instruments;
 - (iii) Possession of transferable documents or instruments;
 - (iv) Indorsement of transferable documents or instruments; and
 - (v) Amendment of transferable documents or instruments.

Technology, Media and Telecommunications

- (d) Section 16M provides for the change of medium by reliable method from a transferable document or instrument to an electronic transferable record, upon which the transferable document or instrument becomes inoperative and ceases to have effect or validity. Section 16N conversely provides for change of medium from an electronic transferable record to a transferable document or instrument.
- (e) Section 16O provides a general standard on the assessment of reliability of the methods engaged in the above provisions relating to electronic signatures, electronic records, and possession, indorsement and amendment of the same. Such methods must be as reliable as appropriate in light of all relevant circumstances, which may include:
 - (i) Relevant operational rules;
 - (ii) Assurance of data integrity;
 - (iii) Ability to prevent unauthorised access to and use of the system;
 - (iv) Security of hardware and software;
 - (v) Regularity and extent of independent audit;
 - (vi) Declaration of reliability by a supervisory body, accreditation body or voluntary scheme; and
 - (vii) Any applicable industry standard.
- (f) Section 16P provides for cross-border recognition of electronic transferable records, providing that electronic transferable records issued or used outside Singapore will not be denied legal effect solely on the basis of their international nature.

Lasting Power of Attorney

An LPA allows an appointed person to make medical and financial decisions on another person's behalf should they lose mental capacity. Currently, an LPA must be in hard copy form.

The Ministry of Social and Family Development has held a public consultation in 2020 on the potential digitalisation of LPAs. This could improve efficiency by cutting the time needed to register an LPA from three weeks to eight working days.

While LPAs are still excluded under Item 3 of the First Schedule of the ETA, the Amendment Bill indicates that Item 3 may eventually be deleted when the legislative and administrative frameworks supporting the digitalisation of LPAs are ready.

Concluding Words

The Amendment Bill is a significant step in the digitalisation of documents and instruments in Singapore. In the area of shipping and international trade, this represents an important development in the

Technology, Media and Telecommunications

modernisation of the industry, allowing it to improve its efficiency and enhance Singapore's position as a maritime and trade hub.

As the ETA and the relevant legislation continue to undergo advancement, businesses seeking to utilise digital alternatives should be aware of the requirements for electronic records to be recognised and should ensure compliance with the prescribed conditions. Rajah & Tann will continue to monitor the developments in this regard and keep you updated on the same.

For further queries, please feel free to approach our team below.

Technology, Media and Telecommunications

Contacts



Rajesh Sreenivasan
Head, Technology, Media &
Telecommunications

T +65 6232 0751

rajesh@rajahtann.com



Steve Tan
Deputy Head, Technology, Media
& Telecommunications

T +65 6232 0786

steve.tan@rajahtann.com



Lionel Tan
Partner, Technology, Media &
Telecommunications

T +65 6232 0752

lionel.tan@rajahtann.com



Benjamin Cheong
Partner, Technology, Media &
Telecommunications

T +65 6232 0738

benjamin.cheong@rajahtann.com



Tanya Tang
Partner (Chief Economic and
Policy Advisor), Competition &
Antitrust and Trade;
Technology, Media &
Telecommunications

T +65 6232 0298

tanya.tang@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

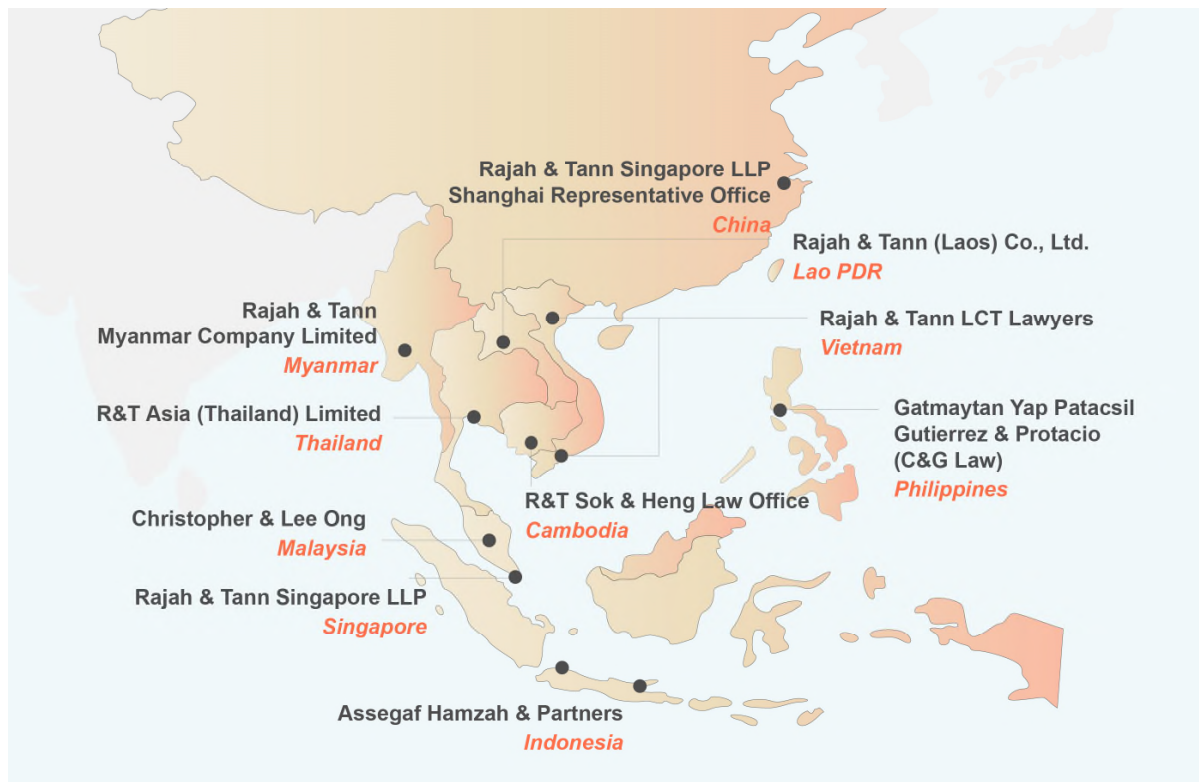
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.