

Fraud, Asset Recovery and Investigations

Singapore Ramps Up Combat against Trade Financing Fraud

Electronic Transactions (Amendment) Act

On 19 March 2021, the Electronic Transactions (Amendment) Act ("**ETAA**") came into operation in Singapore, making Singapore the second country to adopt the United Nations Model Law on Electronic Transferable Record ("**MLETR**") after the Kingdom of Bahrain. The changes that the ETAA effects essentially enable the digitalisation of transferable documents which are often used in cross-border trade. For a more detailed exposition on the ETAA, please refer to our earlier Update on "Proposed Changes to Electronic Transactions Act to Allow Digitalisation of Trade Documents and Other Key Items", available [here](#). This Update focuses on how the ETAA may feature in Singapore's effort to combat fraud in relation to transferable documents.

Fraud Arising from Physical Transferable Documents

Transferable documents refer to documents which entitle the holder to claim performance of the obligations indicated therein. For example, a bill of lading is a transferable document that entitles its holder to the legal title over shipped goods. Despite advancements in digital technology, a majority of these transferable documents today are still physical — paper-based — documents. This observation is worrying especially since developments in reprography are causing these valuable physical documents to be increasingly susceptible to fraud.

The recent spate of fraud cases in 2020, unearthed by the COVID-19 pandemic and the crash in oil prices, is testament to the vulnerability of these physical transferable documents. In just under a year, fraud allegations have been levied against multiple commodities traders operating in the region - Hontop Energy, Agritrade International, and Zen Rock, just to name a few.

The common thread in these incidents of fraud is that they all involve the use of forged physical transferable documents. The impact of these forgeries is particularly deleterious because it reduces the level of trust in the commodities sector, which could eventually lead to increased costs and lowered competitiveness in the industry.

Contribution Note: *This Client Update was written with contributions from Stanley Tan, Practice Trainee.*



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Electronic Transferable Documents — A Promising Solution

A potential solution to the spate of transferable documents fraud is the adoption of electronic transferable documents. These electronic documents are more difficult to forge because they utilise technologies which have authentication and traceability features at its core. Furthermore, the occurrence of fraud is made even more unlikely with the added involvement of trusted providers of electronic transferable documents who are charged with ensuring the security of these documents.

The superiority of electronic transferable documents to physical ones can be gleaned from how the authentication of documents is conducted. The authentication of physical transferable documents often involves verifying the wet signatures, water marks, transfer details and even the density of the paper used, which is extremely time-consuming and potentially inaccurate. On the other hand, the authentication of electronic transferable documents is done almost instantaneously via digital signatures which are almost impossible to forge without access to the signor's device.

Electronic transferable documents are also superior because the technology behind them enables audit trails to be conducted. This enables all relevant parties to, at any time, review the progress of the transaction, identify the timing of any amendments, and determine by whom the amendments were made. Apart from bringing about greater convenience for all parties, this technology also facilitates any forensic investigations in the event of a security breach.

Hypothetically speaking, these security features would likely have prevented the above-mentioned instances of fraud from occurring had electronic transferable documents been in use. The electronic signatures and audit trails would have prevented any attempts by fraudulent commodities traders to forge the transferable documents for the purposes of multiple financing and bogus sales.

While it is recognised that the security provided by electronic transferable documents is not infallible, the costs of finding the relevant expertise and technology to circumvent the security features would probably severely outweigh the any benefit gained from the fraud. This is especially since the level of security that is provided by these electronic transferable documents providers is reputed to be comparable to those used in banking for the electronic transfer of funds. As long as the relevant parties ensure that cyber criminals do not access their systems and impersonate them, electronic transferable documents will serve as a significantly more secure alternative to their paper counterparts.

Singapore's Endorsement of Electronic Transferable Documents

Despite the superiority of electronic transferable documents, its uptake in the world has been at a snail's pace. While the inherent inertia of the commodities industry is one reason for this slow progress, the lack of legislative support is certainly a contributing factor.

Legislative support is an essential ingredient to the viability of electronic documents because while electronic transferable documents can serve as a receipt of goods and as evidence of a contract, it

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might not be recognised as a "document of title" like a physical transferable document is recognised. Legislative intervention is thus needed to assure industry players that electronic transferable documents will be conferred the same status as physical transferable documents in the eyes of the law. Without such intervention, industry players will be reluctant to switch to electronic transferable documents as these documents might, for example, only give them a contractual cause of action as opposed to a proprietary entitlement to the goods stipulated in a bill of lading.

Singapore has, through the passing of the ETAA, provided the necessary legislative support for electronic transferable documents to be used. Section 6 of Singapore's ETAA inserts sections 16A to 16S into the Electronic Transactions Act, which collectively ensure that an electronic transferable document is functionally and legally equivalent to a physical transferable document and is capable of being recognised as a "document of title".

The fact that Singapore is one of the first countries to give such electronic documents legal recognition is testament to its commitment to digitalise and ensure that its commodities sector continues to remain competitive. With such efforts, Singapore is well placed to retain its status as a world-class trade hub, and a leader in this age of digital disruption.

Concluding Words

Without a concerted global effort to adopt electronic transferable documents, cross-border trade will always remain highly susceptible to fraud. As long as one party in the entire supply chain continues to utilise paper documents, the risk of forgery will always subsist. It remains to be seen if the rest of the world will follow Singapore and Bahrain's example, and enact legislation to adopt the MLETR. Doing so would not only tremendously reduce costs in cross-border trade, but would also be a significant milestone in the battle against fraud.

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

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