



REPUBLIC OF SINGAPORE
GOVERNMENT GAZETTE
ACTS SUPPLEMENT
Published by Authority

NO. 6]

FRIDAY, MARCH 12

[2021

First published in the *Government Gazette*, Electronic Edition, on 12 March 2021 at 5 pm.

The following Act was passed by Parliament on 1 February 2021 and assented to by the President on 25 February 2021:—

REPUBLIC OF SINGAPORE

No. 5 of 2021.

I assent.

HALIMAH YACOB,
President.
25 February 2021.

(LS)

An Act to amend the Electronic Transactions Act (Chapter 88 of the 2011 Revised Edition) and to make consequential and related amendments to the Bills of Lading Act (Chapter 384 of the 1994 Revised Edition) and the Contracts (Rights of Third Parties) Act (Chapter 53B of the 2002 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Electronic Transactions (Amendment) Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of long title

2. The long title to the Electronic Transactions Act (called in this Act the principal Act) is amended by inserting, immediately after the words “23rd November 2005”, the words “, to adopt the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law on 13 July 2017”.

Amendment of section 2

3. Section 2 of the principal Act is amended —

(a) by inserting, immediately after the definition of “electronic record” in subsection (1), the following definition:

““electronic transferable record” has the meaning given by section 16A;”;

(b) by inserting, immediately after the words “formation of a contract” in subsection (3)(c)(i), the words “, or the creation or use of electronic transferable records;”;

(c) by deleting the words “or an electronic mail address” in subsection (3)(d) and substituting the words “, an electronic mail address or other electronic address, or other elements of an information system”.

Amendment of section 3

4. Section 3 of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (f); and

(b) by deleting the full-stop at the end of paragraph (g) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

“(h) to adopt the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law on 13 July 2017 in its application to an electronic transferable record, whether the electronic transferable record is issued or used in Singapore or outside Singapore.”.

Amendment of section 13

5. Section 13(4) of the principal Act is amended by deleting the words “subsection (3)” and substituting the words “subsections (2) and (3)”.

New Part IIA

6. The principal Act is amended by inserting, immediately after section 16, the following Part:

“PART IIA

ELECTRONIC TRANSFERABLE RECORDS

Division 1 — General provisions

Interpretation of this Part

16A.—(1) In this Part, unless the context otherwise requires —

“bill of exchange” includes a bill of exchange within the meaning of the Bills of Exchange Act, or under any other rule of law, or the law of a country or territory outside Singapore;

“bill of lading” includes a bill of lading within the meaning of the Carriage of Goods by Sea Act, the Bills of Lading Act, or under any other rule of law, or the law of a country or territory outside Singapore;

“electronic record” means a record generated, communicated, received or stored by electronic means, including (where appropriate) all information

logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not;

“electronic transferable record” means an electronic record that complies with all the requirements of section 16H;

“electronic transferable records management system” means an information system for the issuance, transfer, control, presentation and storage of electronic transferable records;

“Model Law” means the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law on 13 July 2017;

“promissory note” includes a promissory note within the meaning of the Bills of Exchange Act, or under any other rule of law, or the law of a country or territory outside Singapore;

“provider”, in relation to an electronic transferable records management system, means a person that provides to another person the use of an electronic transferable records management system;

“transferable document or instrument” means a document or an instrument issued on paper that entitles the holder to claim the performance of the obligation indicated in the document or instrument and to transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument, and includes —

- (a) a bill of exchange;
- (b) a promissory note; and
- (c) a bill of lading.

-
-
- (2) In the interpretation of any provision of this Part —
- (a) regard is to be had to the international origin of the Model Law and the need to promote uniformity in its application;
 - (b) the following documents are relevant documents for the purposes of section 9A(3)(f) of the Interpretation Act:
 - (i) any document relating to the Model Law that is issued by, or that forms part of the record on the preparation of the Model Law maintained by, the United Nations Commission on International Trade Law and its working group for the preparation of the Model Law;
 - (ii) the Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records; and
 - (c) any question concerning matters governed by this Part which are not expressly settled in this Part are to be settled in conformity with the general principles on which the Model Law is based.

Adoption of Model Law

16B.—(1) This Part adopts the Model Law in its application to an electronic transferable record in accordance with the provisions of this Part.

(2) Unless otherwise provided, nothing in this Part affects the application to an electronic transferable record of any rule of law governing a transferable document or instrument.

Additional information in electronic transferable records

16C. Nothing in this Part precludes the inclusion of any information in an electronic transferable record in addition to any information contained in a transferable document or instrument.

Examples

- (a) An electronic transferable record may contain additional information that is included due to its electronic nature such as metadata or a unique identifier.
- (b) An electronic transferable record may contain additional dynamic information, that is, additional information that may change periodically or continuously, based on an external source, for example the price of a publicly-traded commodity or the position of a vessel.

Requirement of consent

16D.—(1) Nothing in this Part requires a person to use an electronic transferable record without the person’s consent.

(2) The consent of a person to use an electronic transferable record may be inferred from the person’s conduct.

(3) Pursuant to subsection (1) —

- (a) the parties who do not consent to the use of an electronic transferable record may derogate from all the provisions of this Part; but
- (b) the parties may not derogate from only some but not all the provisions of this Part.

*Division 2 — Provisions on functional equivalence***Legal recognition of electronic transferable record**

16E. To avoid doubt, an electronic transferable record is not to be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Requirement for writing

16F. Section 7 applies to an electronic transferable record as it applies to an electronic record within the meaning of section 2(1).

Requirement for signature

16G. Where a rule of law requires a signature of a person, or provides for certain consequences if a transferable document or instrument is not signed, that requirement is met with respect to an electronic transferable record if a reliable method is used —

- (a) to identify that person; and
- (b) to indicate that person's intention in respect of the information contained in the electronic transferable record.

Transferable documents or instruments

16H.—(1) Where a rule of law requires a transferable document or instrument, that requirement is met by an electronic record if —

- (a) the electronic record contains the information that would be required to be contained in the transferable document or instrument; and
- (b) a reliable method is used —
 - (i) to identify that electronic record as the authoritative electronic record constituting the electronic transferable record;
 - (ii) to render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
 - (iii) to retain the integrity of that electronic record.

(2) For the purposes of subsection (1)(b)(iii), the criterion for assessing integrity is whether information contained in the electronic record, including any authorised change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change that arises in the normal course of communication, storage or display.

Requirement for possession or transfer of possession

16I.—(1) Where a rule of law requires the possession of a transferable document or instrument, or provides for certain consequences if a transferable document or instrument is not possessed, that requirement is met with respect to an electronic transferable record if a reliable method is used —

- (a) to establish exclusive control of that electronic transferable record by a person; and
- (b) to identify that person as the person in control.

(2) Where a rule of law requires the transfer of possession of a transferable document or instrument, or provides for certain consequences if possession of a transferable document or instrument is not transferred, that requirement is met with respect to an electronic transferable record through the transfer of control over the electronic transferable record to another person in accordance with subsection (1).

*Division 3 — Use of electronic transferable record***Indication of time and place in electronic transferable record**

16J. Where a rule of law requires the indication of time or place with respect to a transferable document or instrument, or provides for certain consequences if time or place is not indicated with respect to a transferable document or instrument, that requirement is met if a reliable method is used to indicate that time or place with respect to an electronic transferable record.

Indorsement

16K. Where a rule of law requires the indorsement in any form of a transferable document or instrument, or provides for certain consequences if a transferable document or instrument is not indorsed, that requirement is met with respect to an electronic transferable record if the information required for the indorsement is included in the electronic transferable record in

compliance with the requirements for writing and signature in sections 16F and 16G respectively.

Amendment

16L. Where a rule of law requires the amendment of a transferable document or instrument, or provides for certain consequences if a transferable document or instrument is not amended, that requirement is met with respect to an electronic transferable record if a reliable method is used for the amendment of any information in the electronic transferable record so that the amended information is identified as such.

Change of medium from transferable document or instrument to electronic transferable record

16M.—(1) An electronic transferable record may replace a transferable document or instrument if a reliable method for the change of medium in accordance with this section is used.

(2) For the change of medium mentioned in subsection (1) to take effect, the following requirements must be satisfied:

- (a) all the information contained in the transferable document or instrument must be accurately reproduced in the electronic transferable record that replaces the transferable document or instrument;
- (b) a statement indicating a change of medium must be inserted in the electronic transferable record that replaces the transferable document or instrument.

(3) Upon the issuance of the electronic transferable record in accordance with subsections (1) and (2), the transferable document or instrument —

- (a) ceases to have any effect or validity; and
- (b) must be made inoperative.

(4) A change of medium in accordance with subsections (1) and (2) does not affect the rights and obligations of the parties.

Change of medium from electronic transferable record to transferable document or instrument

16N.—(1) A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium in accordance with this section is used.

(2) For the change of medium mentioned in subsection (1) to take effect, the following requirements must be satisfied:

- (a) all the information contained in the electronic transferable record must be accurately reproduced in the transferable document or instrument that replaces the electronic transferable record;
- (b) a statement indicating a change of medium must be inserted in the transferable document or instrument that replaces the electronic transferable record.

(3) For the purposes of subsection (2)(a), the information in the electronic transferable record that must be accurately reproduced in the transferable document or instrument that replaces the electronic transferable record does not include any additional information that may be contained in an electronic transferable record mentioned in section 16C.

(4) Upon the issuance of the transferable document or instrument in accordance with subsections (1) and (2), the electronic transferable record —

- (a) ceases to have any effect or validity; and
- (b) must be made inoperative.

(5) A change of medium in accordance with subsections (1) and (2) does not affect the rights and obligations of the parties.

Division 4 — General reliability standard

General reliability standard

16O.—(1) For the purposes of sections 16G, 16H, 16I, 16J, 16L, 16M and 16N, the reliable method mentioned in each of these provisions must be —

-
-
- (a) as reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all the relevant circumstances, which may include —
- (i) any operational rules that are relevant to the assessment of reliability;
 - (ii) the assurance of data integrity;
 - (iii) the ability to prevent unauthorised access to and use of the system;
 - (iv) the security of hardware and software;
 - (v) the regularity and extent of audit by an independent body;
 - (vi) the existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme, regarding the reliability of the method;
or
 - (vii) any applicable industry standard; or
- (b) proven in fact to have fulfilled the function by itself or together with any further evidence.

(2) In any proceedings involving an electronic transferable record that is issued, transferred, controlled, presented and stored by means of an accredited electronic transferable records management system provided by a provider that is registered, licensed, accredited or recognised in accordance with regulations made under section 16Q, it is presumed, unless evidence to the contrary is adduced, that the methods used by the electronic transferable records management system to fulfil the requirements under this Part in relation to the electronic transferable record are as reliable as appropriate.

(3) The presumption in subsection (2) applies only if the electronic transferable record is issued, transferred, controlled, presented and stored by means of the accredited electronic transferable records management system provided by the provider during the period in which the provider is registered, licensed, accredited or recognised under this Part.

*Division 5 — Cross-border recognition of
electronic transferable record*

Non-discrimination of foreign electronic transferable records

16P.—(1) An electronic transferable record is not to be denied legal effect, validity or enforceability solely on the ground that it was issued or used outside Singapore.

(2) Nothing in this Part affects the application to an electronic transferable record of any rule of private international law governing a transferable document or instrument.

Division 6 — Accreditation, etc., of provider of electronic transferable records management system

Regulations

16Q.—(1) The Minister may make regulations for the carrying out of this Part and, without limiting such general power, may make regulations for the following purposes:

- (a) the registration, licensing or accreditation of providers of an electronic transferable records management system;
- (b) the accreditation of electronic transferable records management systems that satisfy the requirements of providing a reliable method under section 16O for the fulfilment of the requirements in relation to an electronic transferable record under this Part;
- (c) to prescribe the accounts to be kept by a provider of an electronic transferable records management system

that is registered, licensed or accredited under this Part;

- (d) to provide for the appointment and remuneration of an auditor for the audit of a provider of an electronic transferable records management system that is registered, licensed or accredited under this Part, and for the costs of an audit carried out under the regulations;
- (e) to provide for the use of any accreditation mark in relation to the activities of a provider of an electronic transferable records management system in relation to such system, and for controls over the use of such accreditation mark;
- (f) to prescribe the duties and liabilities of a provider of an electronic transferable records management system that is registered, licensed or accredited under this Part in respect of its customers;
- (g) to provide for the conduct of any inquiry into the conduct of any provider of an electronic transferable records management system and its authorised representatives and the recovery of the costs and expenses involved in such an inquiry;
- (h) to prescribe the forms and fees applicable for the purposes of this Part.

(2) Without limiting subsection (1), the Minister may make regulations to provide for the cross-border recognition of a provider of an electronic transferable records management system that is incorporated, formed or established in a country or territory outside Singapore (called in this section a foreign provider) where the foreign provider —

- (a) is registered, licensed or accredited under a particular registration, licensing or accreditation scheme (as the case may be) established outside Singapore; and

(b) carries on its business relating to the electronic transferable records management system in accordance with requirements that are at least equivalent or comparable to the requirements applicable to a provider of an electronic transferable records management system that is or would be registered, licensed or accredited under this Part.

(3) Regulations made under this section may provide that a contravention of a specified provision shall be an offence and shall be punishable with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 12 months or with both.

Controller may give directions for compliance

16R.—(1) The Controller may, by written notice, direct a provider of an electronic transferable records management system that is registered, licensed or accredited under this Part, or any of its officers, employees or authorised representatives, to take any measure or stop carrying on any activity specified in the notice that is necessary to ensure compliance with this Part.

(2) Any person who fails to comply with any direction specified in a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

Power to investigate

16S.—(1) The Controller or an authorised officer may investigate the activities of a provider of an electronic transferable records management system that is registered, licensed or accredited under this Part, or any of its officers, employees or authorised representatives, in relation to their compliance with this Part.

(2) For the purposes of subsection (1), the Controller may issue a written order to the provider or any of its officers, employees or authorised representatives, to further an investigation under this section or to secure compliance with

this Part, including an order to produce records, accounts, data and documents kept by the provider, and to allow the Controller or an authorised officer to examine and copy any of them.”.

Amendment of section 38

7. Section 38 of the principal Act is amended by deleting the words “section 22” wherever they appear and substituting in each case the words “sections 16Q and 22”.

Amendment of First Schedule

8. Item 2 of the First Schedule to the principal Act is deleted.

Related amendments to Bills of Lading Act

9. The Bills of Lading Act (Cap. 384) is amended —

- (a) by deleting subsections (5) and (6) of section 1;
- (b) by deleting the semi-colon at the end of the definition of “holder” in section 5(1) and substituting a full-stop; and
- (c) by deleting the definitions of “information technology” and “telecommunication system” in section 5(1).

Consequential and related amendments to Contracts (Rights of Third Parties) Act

10. Section 7 of the Contracts (Rights of Third Parties) Act (Cap. 53B) is amended —

- (a) by deleting the words “, sea waybill or a corresponding electronic transaction” in paragraph (a) of the definition of “contract for the carriage of goods by sea” in subsection (5) and substituting the words “or sea waybill”;
- (b) by deleting the words “or a corresponding electronic transaction” in paragraph (b) of the definition of “contract for the carriage of goods by sea” in subsection (5); and
- (c) by deleting subsection (6) and substituting the following subsection:

“(6) For the purposes of subsection (5), “bill of lading”, “sea waybill” and “ship’s delivery order” have the meanings given by the Bills of Lading Act.”
