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Electronic Transactions (Amendment) Bill

Bill No. 1/2021.

Read the first time on 4 January 2021.

A BILL

intituled

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*.

5 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 —

15 (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;”;

20 (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”.

25 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

30 (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.”. 5

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)”. 10

New Part IIA

6. The principal Act is amended by inserting, immediately after section 16, the following Part: 15

“PART IIA

ELECTRONIC TRANSFERABLE RECORDS

Division 1 — General provisions

Interpretation of this Part

16A.—(1) In this Part, unless the context otherwise requires — 20

“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; 25

“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 30

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

5 “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;

10 “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;

15 “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;

20 “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;

25 “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;

30 (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.

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(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.

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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.

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(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

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(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**

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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 — 5

- (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 10

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 15
- (b) a reliable method is used —
 - (i) to identify that electronic record as the authoritative electronic record constituting the electronic transferable record; 20
 - (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. 25 30

Requirement for possession or transfer of possession

5 **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.

10 (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

20 **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

30 **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

5 **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:

10 (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.

15 (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.

20 (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

25 (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

30 **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; 5
 - (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; 10
 - (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; 15
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. 20
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(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; 5
- (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; 10
- (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; 15
- (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; 20
- (h) to prescribe the forms and fees applicable for the purposes of this Part. 25

(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 — 30

- (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”. 5

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 — 10

- (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). 15

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 — 20

- (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 25
- (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.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Electronic Transactions Act (Cap. 88) for the following purposes:

- (a) to adopt with modifications the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 13 July 2017 (called the Model Law);
- (b) to amend section 13 to achieve consistency with Article 10 of the United Nations Convention on the Use of Electronic Communications in International Contracts (called the ECC);
- (c) to delete item 2 of the First Schedule, in conjunction with the adoption of the Model Law.

The Bill also makes consequential and related amendments to the Bills of Lading Act (Cap. 384) and the Contracts (Rights of Third Parties) Act (Cap. 53B).

The adoption of the Model Law, together with the deletion of item 2 of the First Schedule, is part of a wider and ongoing initiative by the Government to review and support the electronisation of various types of instruments or transactions, including the other matters specified in the First Schedule. These other matters will be deleted when the legislative and administrative frameworks supporting the electronisation of these other items are ready to be enacted or implemented.

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to add a reference to the adoption of the Model Law.

Clause 3 amends subsections (1) and (3)(c) and (d) of section 2 (Interpretation) to insert a new definition of “electronic transferable record” and to give effect to Article 14 of the Model Law.

Clause 4 amends section 3 (Purposes and construction) which sets out the purposes of the Act. The clause inserts a new paragraph (h) to provide that it is a purpose of the Act to adopt the Model Law in its application to an electronic transferable record, whether the electronic transferable record is issued or used in Singapore or outside Singapore.

Clause 5 amends section 13 (Time and place of despatch and receipt) which implements Article 10 of the ECC. The existing subsection (4) provides that an electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the electronic address of the addressee for the purposes of subsection (3). Subsection (3) provides the rule for determining the time of receipt of an electronic communication at an electronic address in a case where the electronic address has not been designated by the addressee.

However, in accordance with Article 10 of the ECC, the presumption should also apply in determining the time of receipt of an electronic communication at an electronic address in a case where the electronic address has been designated by the addressee, which is the subject of subsection (2). The clause therefore seeks to make section 13(4) consistent with Article 10 of the ECC.

Clause 6 inserts a new Part IIA, comprising new sections 16A to 16S.

The new section 16A adopts Article 2 of the Model Law and provides the definitions for “electronic record”, “electronic transferable record” and “transferable document or instrument”. It also provides the definitions for “bill of exchange”, “bill of lading”, “Model Law”, “promissory note”, “electronic transferable records management system” and the “provider” of such a system for the purposes of the new Part IIA.

The definition of “electronic record” in the new section 16A(1) is different from the definition of “electronic record” in section 2(1) in 2 aspects:

- (a) the words “in an information system or for transmission from one information system to another” in the definition of “electronic record” in section 2(1) are omitted from the definition of “electronic record” in the new section 16A(1). This is due to the possibility that an electronic record that constitutes an electronic transferable record may not be transmitted from one information system to another;
- (b) the definition of “electronic record” in the new section 16A(1) includes the words “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”, which do not appear in the definition of “electronic record” in section 2(1). These words refer to the possibility that an electronic record that constitutes an electronic transferable record may include a set of composite information, for example, the electronic record may include information effecting indorsements or amendments. A piece of information is “logically associated” with another piece of information if they are electronically connected with each other by means of computer software.

The term “transferable document or instrument” is defined as a document or an instrument that is issued on paper, and that entitles the holder —

- (a) to claim the performance of the obligation that is indicated in the document or instrument; and
- (b) to transfer the right to performance of the obligation that is indicated in the document or instrument through the transfer of that document or instrument.

The definition of “transferable document or instrument” is a descriptive definition. Substantive law determines which documents or instruments fall within the definition, as well as the rights of the person in possession of the transferable document or instrument. The definition also contains a non-exhaustive list of 3 examples of transferable documents or instruments, namely, a bill of exchange, a promissory note and a bill of lading. Any other document or instrument that is (or may in the future acquire the status of) a transferable document or instrument (e.g. a document of title through proof of mercantile custom to that effect), would also fall within the definition.

The definitions of “bill of exchange” and “promissory note” (which terms are used in the definition of “transferable document or instrument”) provide respectively that a “bill of exchange” and “promissory note” include a bill of exchange and promissory note within the meaning of the Bills of Exchange Act, or under any other rule of law, or under the law of a country or territory outside Singapore.

The definition of “bill of lading” (which term is used in the definition of “transferable document or instrument”) provides that a “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 (e.g. the Factors Act), or under the law of a country or territory outside Singapore.

The term “electronic transferable record” is defined as an electronic record that complies with the requirements of the new section 16H, which provides the functional equivalence rule for the electronic functional equivalent of a transferable document or instrument.

The term “provider”, in relation to an electronic transferable records management system, is defined as a person (i.e. a system provider or service provider) that provides, to another person (i.e. an end-user), the use of an electronic transferable records management system.

The new section 16A(2)(a) adopts Article 3(1) of the Model Law by providing that in interpreting the provisions of the new Part IIA, regard is to be had to the international origin of the Model Law and to the need to promote uniformity in its application. The new section 16A(2)(c) adopts Article 3(2) of the Model Law by providing that any question concerning matters which are not expressly settled in the new Part IIA are to be settled in conformity with the general principles on which the Model Law is based. In addition, the new section 16A(2)(b) provides that any document relating to the Model Law issued by, or that is part of the record

on the preparation of the Model Law maintained by, the UNCITRAL and its working group that prepared the Model Law, as well as the Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, are relevant documents for the purposes of section 9A(3)(f) of the Interpretation Act for the purposes of interpreting any provision of the new Part IIA.

The new section 16B provides that the new Part IIA adopts the Model Law in its application to an electronic transferable record in accordance with the provisions of that Part. It also states that unless otherwise provided, the new Part IIA does not affect any application of any rule of law governing a transferable document or instrument.

The new section 16C adopts with modification Article 6 of the Model Law by providing that the new Part IIA does not preclude the inclusion of any information in an electronic transferable record that is in addition to any information contained in a transferable document or instrument. The information contained in a transferable document or instrument includes information that is required by substantive law to be contained in a transferable document or instrument for its issuance and use, as well as information that is permitted (but not required) to be included in a transferable document or instrument. The additional information mentioned in the new section 16C refers to additional information that may be contained in an electronic transferable record due to its electronic nature. Examples of such additional information that may be contained in an electronic transferable record due to its electronic nature include metadata, a unique identifier or information that may change periodically or continuously based on an external source (i.e. dynamic information, such as the geographical location of the shipped cargo mentioned in an electronic bill of lading). A paper bill of lading may contain static information which is a reference to external dynamic information, such as a reference to a URL for an Internet website containing dynamic information. Such a static reference (i.e. URL) would fall within the phrase “information contained in a transferable document or instrument” in the new section 16C. When included in an electronic bill of lading, such a static reference is not additional information that may be contained in an electronic transferable record due to its electronic nature, and will therefore need to be accurately reproduced in a change of medium under the new section 16N.

The new section 16D(1) and (2) adopts Article 7(2) and (3) of the Model Law by providing that the new Part IIA does not require a person to use an electronic transferable record without the person’s consent. For this purpose, the consent of a person to use an electronic transferable record does not need to be expressly indicated or given in any particular form, and may be inferred from the person’s conduct. The new section 16D(3) also provides that parties who do not consent to the use of an electronic transferable record may derogate from all the provisions of the new Part IIA. However, parties are not permitted to derogate from only some (but not all) of those provisions, which is consistent with the fact that the

substantive law relating to transferable documents or instruments is of mandatory application and cannot be derogated from or varied by the parties.

The new section 16E adopts Article 7(1) of the Model Law. It provides that an electronic transferable record is not to be denied legal effect solely on the ground that it is in the form of an electronic record.

The new section 16F adopts Article 8 of the Model Law. It provides that section 7, which is consistent with Article 8 of the Model Law, applies to an electronic transferable record.

The new section 16G adopts Article 9 of the Model Law by providing a functional equivalence rule for a signature. An electronic signature used in relation to an electronic transferable record satisfies any rule of law that requires a signature of a person or provides for certain consequences if a transferable document or instrument is not signed, if the electronic signature is a reliable method that identifies the person and indicates the person's intention in respect of the information contained in the electronic transferable record. The functional equivalence rule for a signature in the new section 16G is different from the analogous rule in section 8 in that the new section 16O (which applies to the new section 16G) differs from section 8(b).

The new section 16H adopts with modification Article 10 of the Model Law by providing a functional equivalence rule for a transferable document or instrument. An electronic record satisfies the requirements of a transferable document or instrument 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 the time of its creation to the time it ceases to have any effect or validity; and
 - (iii) to retain the integrity of that electronic record.

The criterion for assessing the integrity of an electronic record is whether information contained in it, including any authorised change that arises from the time of its creation to the time it ceases to have any effect or validity, has remained complete and unaltered. A change to information contained in an electronic transferable record is an “authorised change” if the change is as agreed upon by the parties to contractual obligations related to the electronic transferable record (such a change may be made at any time throughout the life cycle of the electronic transferable record), and permitted by the electronic transferable records

management system. Any change that arises in the normal course of communication, storage or display does not affect the integrity of the electronic transferable record.

The new section 16I(1) adopts Article 11 of the Model Law by providing a functional equivalence rule for the possession of a transferable document or instrument. An electronic transferable record satisfies any rule of law that requires the possession of a transferable document or instrument or provides for certain consequences if a transferable document or instrument is not possessed, if a reliable method is used to establish exclusive control of the electronic transferable record by a person and to identify the person in control. The person in control of an electronic transferable record is in the same legal position as the person in possession of an equivalent transferable document or instrument. The new section 16I(2) provides that the transfer of control over an electronic transferable record is the functional equivalent of the transfer of possession of a transferable document or instrument. The type of control that is to be transferred to another person pursuant to the new section 16I(2) is control that fulfils all the requirements of the new section 16I(1).

The new section 16J adopts Article 13 of the Model Law by providing that any rule of law that 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 is satisfied if a reliable method is used to indicate the time or place with respect to an electronic transferable record.

The new section 16K adopts Article 15 of the Model Law by providing a functional equivalence rule for the indorsement in any form of a transferable document or instrument. A rule of law that requires the indorsement in any form (e.g. indorsement on the back of a transferable document or instrument or by affixing an *allonge*) of a transferable document or instrument or provides for certain consequences if a transferable document or instrument is not indorsed, is satisfied 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 the new sections 16F and 16G respectively.

The new section 16L adopts Article 16 of the Model Law by providing a functional equivalence rule for the amendment of a transferable document or instrument. A rule of law that requires the amendment of a transferable document or instrument or provides for certain consequences if a transferable document or instrument is not amended is satisfied with respect to an electronic transferable record if a reliable method is used for amendment of information in the electronic transferable record so that the amended information is identified as such.

The new section 16M adopts with modification Article 17 of the Model Law by providing for a change of medium from a transferable document or instrument to

an electronic transferable record if a reliable method for the change of medium in accordance with that section is used. Such a change of medium has effect only if —

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

Upon the issuance of the electronic transferable record in accordance with these requirements, the transferable document or instrument (that is being replaced) ceases to have any effect or validity, and must be made inoperative. Normally, this would be done by the provider of the electronic transferable records management system. The new section 16M(4) also clarifies that a change of medium in accordance with the new section 16M(1) and (2) does not affect the rights and obligations of the parties.

The new section 16N adopts with modification Article 18 of the Model Law by providing a parallel provision to the new section 16M, for a change of medium from an electronic transferable record to a transferable document or instrument. The new section 16N(3) provides that the requirement that all the information in the electronic transferable record must be accurately reproduced in the replacing transferable document or instrument does not include any additional information that may be contained in an electronic transferable record due to its electronic nature mentioned in the new section 16C, and therefore such additional information need not be included in the replacing transferable document or instrument for the change of medium to take effect.

The new section 16O(1) adopts Article 12 of the Model Law by providing a general standard on the assessment of the reliability of each “reliable method” mentioned in the new sections 16G, 16H, 16I, 16J, 16L, 16M and 16N. For the purposes of each of these provisions, the method must be as reliable as appropriate for the fulfilment of the function for which the method is being used. The new section 16O(1) further sets out a non-exhaustive list of relevant circumstances for the purpose of assessing the reliability of the method mentioned in those sections. The assessment of the reliability of each relevant method should be carried out separately in light of the function specifically pursued by the use of that method.

The new section 16O(2) and (3) (which is not found in the Model Law) also provides that 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 the new 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 the new Part IIA in relation to the electronic transferable record are as reliable as appropriate. This presumption 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 the new Part IIA.

The new section 16P adopts Article 19 of the Model Law by providing that an electronic transferable record is not to be denied legal effect solely on the ground that it was issued or used outside Singapore. It also provides that the new Part IIA does not affect the application to an electronic transferable record of any rule of private international law governing a transferable document or instrument.

The new section 16Q(1) empowers the Minister to make regulations for the purposes of carrying out of the new Part IIA, including regulations for the registration, licensing or accreditation of providers of an electronic transferable records management system and the accreditation of electronic transferable records management systems that satisfy the requirements of providing a reliable method under the new section 16O for the fulfilment of the requirements in relation to an electronic transferable record under that Part. The new section 16Q(2) provides that the Minister may also 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 foreign jurisdiction. The foreign provider may be recognised in accordance with such regulations if it is registered, licensed or accredited under a particular registration, licensing or accreditation scheme (as the case may be) established outside Singapore, and it 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 the new Part IIA. The regulations may provide that a contravention of any specified provision in the regulations is an offence.

The new section 16R empowers the Controller to give directions to a provider that is registered, licensed or accredited under the new Part IIA, or any of its officers, employees or authorised representatives, to take specified measures or to stop carrying on specified activities if they are necessary to ensure compliance with that Part.

The new section 16S empowers the Controller or an authorised officer to investigate the activities of a provider that is registered, licensed or accredited under the new Part IIA, or any of its officers, employees or authorised representatives, in relation to their compliance with that Part, and to require the production of documents and data for those purposes.

Clause 7 makes a consequential amendment to section 38 (Regulations) to insert a reference to the new section 16Q.

Clause 8 deletes item 2 of the First Schedule.

Clause 9 makes related amendments to sections 1 and 5 of the Bills of Lading Act.

Clause 10 makes consequential and related amendments to section 7 of the Contracts (Rights of Third Parties) Act arising from the amendments to the Bills of Lading Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
