



# InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

## Policy Cross-domain

### Archival Legislation in Singapore

Compiled by Greg Kozak  
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#### Singapore

These are the two main legislative acts dealing with archives and preservation. However, many other legislative acts mention the importance of keeping accurate records (e.g., Futures Trading Act 1986, 34.1). These acts can be found at “Singapore Statutes Online.”<sup>1</sup>

Compiler’s comments are noted below in [red].

#### Copyright Act 1987<sup>2</sup>

Archives: Archival material in the custody of the National Archives of Singapore. A collection of documents or other material to which this paragraph applies by virtue of subsection 4 (see below). (7-1)

Record: means a disc, tape, paper, or other device in which sounds are embodied. (7-1)

When a collection of documents or other material of historical significance or public interest that is in the custody of a body, when corporate or unincorporated, is being maintained by the body for the purpose of conserving and preserving those documents or other material; and the body does not maintain and operate the collection for the purpose of deriving profit; then the definition of “archives” (see above) applies to that collection. (7-4)

An unpublished work may be copied by the archives for the purpose of preservation if it is deemed that the original is at risk of being lost or ruined. In this case, copyright is not infringed. (48 –1&2) The same holds true for sound recordings and cinematograph films. (113 –1&2) However, the archives must first check if it can be obtained from another source within a reasonable time and at a reasonable price.

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<sup>1</sup> [http://statutes.agc.gov.sg/non\\_version/html/homepage.html](http://statutes.agc.gov.sg/non_version/html/homepage.html).

<sup>2</sup> [http://statutes.agc.gov.sg/non\\_version/html/homepage.html](http://statutes.agc.gov.sg/non_version/html/homepage.html).

For back-up purposes, a computer program may only be reproduced if it is made by, or on behalf of the owner of the original. The owner of the original may also authorise the making of another copy. (39. 1&3)

Electronic Copy: means a copy of the material in an electronic form, and includes the original version of the material in that form; “material” means any work or any subject-matter other than that work in which copyright subsists by virtue of this Act. (193A)

***Most of the provisions discussing electronic copies relate to electronic copies made available on networks. It does not relate to electronic records, but to the use of computer programs on a network by many users. (193B-E)***

### **National Heritage Board Act 1993<sup>3</sup>**

This is the National Archives enabling legislation. It replaces the “National Archives and Records Centre” Act. It views records as having national or historical value. This omits legal value.

Public Archives: those public records that are more than 25 years old; and are specified by the Board as being of national or historical significance. (2) [This seems to imply that they do not really hold electronic records.]

Public Records: means papers, documents, records, registers, printed materials, books, maps, plans, drawings, photographs, microforms, videotapes, films, *machine readable and electronic records*, sound recordings and other forms of records of any kind whatsoever, produced or received by any public office in the transaction of official business, or by any officer in the course of his official duties, and includes public archives. (2)

The Board has powers to develop and manage the archives. (7-2a)

The Board has the power to collect, classify, preserve, and display records relevant to its functions. (7-2b)

The Board has the power to arrange for or provide professional and technical services. (7-2h) [This might include services targeted at electronic preservation.]

The Board will establish the National Archives of Singapore in which records of national or historical significance shall be preserved. (17-1)

The Board has responsibility for instituting a government records management program. This involves the efficient creation, utilisation, maintenance, retention, preservation and disposal of public records. (17-2d)

The Board may acquire by purchase or donation, bequest or otherwise any document, book or other material which, in the opinion of the Board, is likely to be of national or historical significance. (17-2h)

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<sup>3</sup> [http://statutes.agc.gov.sg/non\\_version/cgi-bin/cgi\\_retrieve.pl?&actno=Reved-196A&date=latest&method=part](http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?&actno=Reved-196A&date=latest&method=part).

The Board will appoint a director of the National Archives, who will be responsible to the Board and for the general management of the archives. (18-1)

Records deemed to have national or historical significance will be transferred to the National Archives for care. (19)

[Enabler?]- Records in the control or possession cannot be destroyed without the authorisation of the Board. (21-1). The Board can authorise the destruction of classes of records because of the number, kind, or routine nature do not possess any enduring value for preservation. (21-4)

No person is permitted to publish or reproduce any of the contents of public records in the Archives, unless permission has been made explicit when the records were donated, without permission from the director of the Archives. This section does not affect or extend copyright. (24)

### **Evidence Act 1893 (Revised 1997)**

A court will presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any public officer in Singapore or any officer in Malaysia who is duly authorised thereto, if such document is substantially in the form and purports to be executed in the manner directed by the law in the behalf. (81-1)

### **Electronic Transactions Act<sup>4</sup>**

This is legislation deals with digital signatures and encryption.

*Digital Signature*: means an electronic signature that can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key; and, whether the initial electronic record has been altered since the transformation was made.

[Barrier- as discussed by Jean-Francois Blanchette]

*Electronic Record*: means a record generated, communicated, received or stored by electronic, magnetic, optical or other means in an information system or for transmission from one information system to another.

*Electronic Signature*: means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted with the intention of authenticating or approving the electronic record.

*Record*: means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

*Signed/Signature*: and its grammatical variations include any symbol executed or adopted, or any methodology or procedure employed or adopted, by a person with the intention of authenticating a record, including electronic or digital methods.

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<sup>4</sup> [http://statutes.agc.gov.sg/non\\_version/html/homepage.html](http://statutes.agc.gov.sg/non_version/html/homepage.html).

*Trustworthy System*: means computer hardware, software and procedures that- are reasonably secure from intrusion and misuse; and, provide a reasonable level of availability, reliability and correct operation.

The Act is to give effect to facilitate electronic communications by means of reliable electronic records. (3a) It also endeavours to promote the development of legal and business infrastructures necessary to implement secure electronic commerce [and presumably this includes keeping authentic and reliable records?] (3b)

This Act also hopes to establish uniformity of rules, regulations and standards regarding the authentication and integrity of electronic records. (3e)

The Act is applied to both business and legal documents (e.g., wills, indentures, contracts of sale, documents of title...). (4)

Electronic documents have the same legal effect, validity, and enforceability as non-electronic records. Electronic records also satisfy the obligation to have a written record when the option is given. (6)

#### (9) Retention [Enabler]

(9.1) The rule of law requires that some documents, records or information be retained. In such cases, the requirement is satisfied by retaining them in the form of electronic records if the following conditions are satisfied:

- The information contained therein remains accessible so as to be usable for subsequent reference;
- The electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- Such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained; and
- The consent of the department or ministry of the Government, organ of State or the statutory corporation which has supervision over the requirement for the retention of such records has been obtained.

(9.2) An obligation to retain documents, records or information in accordance with subsection (1) (c) shall not extend to any information necessarily and automatically generated solely for the purpose of enabling a record to be sent or received.

(9.3) A person may satisfy the requirement referred to in subsection (1) by using the services of any other person, if the conditions in paragraphs (a) to (d) of that subsection are complied with.

(9.4) Nothing in this section shall —

(a) apply to any rule of law which expressly provides for the retention of documents, records or information in the form of electronic records; or

(b) preclude any department or ministry of the Government, organ of State or a statutory corporation from specifying additional requirements for the retention of electronic records that are subject to the jurisdiction of such department or ministry of the Government, organ of State or statutory corporation.

## (16) Secure Electronic Records

(16.1) If a prescribed security procedure or a commercially reasonable security procedure agreed to by the parties involved has been properly applied to an electronic record to verify that the electronic record has not been altered since a specific point in time, such record shall be treated as a secure electronic record from such specific point in time to the time of verification.

(16.2) For the purposes of this section and section 17, whether a security procedure is commercially reasonable shall be determined having regard to the purposes of the procedure and the commercial circumstances at the time the procedure was used, including —

- (a) the nature of the transaction;
- (b) the sophistication of the parties;
- (c) the volume of similar transactions engaged in by either or all parties;
- (d) the availability of alternatives offered to but rejected by any party;
- (e) the cost of alternative procedures; and
- (f) the procedures in general use for similar types of transactions.

## (19) Secure Electronic Record with Digital Signature

The portion of an electronic record that is signed with a digital signature shall be treated as a secure electronic record if the digital signature is a secure electronic signature by virtue of section 20.

## (20) Secure Digital Signature

When any portion of an electronic record is signed with a digital signature, the digital signature shall be treated as a secure electronic signature with respect to such portion of the record, if —

- (a) the digital signature was created during the operational period of a valid certificate and is verified by reference to the public key listed in such certificate; and
- (b) the certificate is considered *trustworthy*, in that it is an *accurate* binding of a public key to a person's identity because —
  - (i) the certificate was issued by a licensed certification authority operating in compliance with the regulations made under section 42 ;
  - (ii) the certificate was issued by a certification authority outside Singapore recognised for this purpose by the Controller pursuant to regulations made under section 43;
  - (iii) the certificate was issued by a department or ministry of the Government, an organ of State or a statutory corporation approved by the Minister to act as a certification authority on such conditions as he may by regulations impose or specify; or
  - (iv) the parties have expressly agreed between themselves (sender and recipient) to use digital signatures as a security procedure, and the digital signature was properly verified by reference to the sender's public key.

## (22) Unreliable Digital Signatures [Barrier- since it places strictures on what is considered reliable]

Unless otherwise provided by law or contract, a person relying on a digitally signed electronic record assumes the risk that the digital signature is invalid as a signature or authentication of the signed electronic record, if reliance on the digital signature is not reasonable under the circumstances having regard to the following factors:

- (a) facts which the person relying on the digitally signed electronic record knows or has notice of, including all facts listed in the certificate or incorporated in it by reference;

- (b) the value or importance of the digitally signed electronic record, if known;
- (c) the course of dealing between the person relying on the digitally signed electronic record and the subscriber and any available indicia of reliability or unreliability apart from the digital signature; and
- (d) any usage of trade, particularly trade conducted by trustworthy systems or other electronic means.

(27) Trustworthy System

A certification authority must utilise trustworthy systems in performing its services.

(47) Acceptance of electronic filing and issue of documents [Enabler- it makes it explicit that a government agency must keep electronic records(1), and what format was used...(2)]

(47.1) Any department or ministry of the Government, organ of State or statutory corporation that, pursuant to any written law —

- (a) accepts the filing of documents, or requires that documents be created or retained;

(47.2) In any case where a department or ministry of the Government, organ of State or statutory corporation decides to perform any of the functions in subsection (1) (i), (ii) or (iii), such agency may specify —

- (a) the manner and format in which such electronic records shall be filed, created, retained or issued;
- (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 digital signature or other 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 certification authority used by the person filing the document;
- (d) control processes and procedures as 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