

SINGAPORE STAMP DUTY TO BE EXTENDED TO ELECTRONIC DOCUMENTS?

Posted on September 28, 2018

Category: [CNPupdates](#)

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.



Date Published: 28 September 2018

Authors and Contributors: Bill Jamieson and Joy Tan.

The Stamp Duties (Amendment) Bill (“**Amendment Bill**”) was read for the first time in Parliament on 6 August 2018. The main proposed change is to introduce a new Part VIIIA to the Stamp Duties Act (“**Act**”), specifying that the Act applies to electronic instruments prescribed under the new Part VIIIA.

Under **s60A** of the Act as inserted by the Amendment Bill, a reference in the Act to an instrument or a description of instrument that effects a transaction will include:

- An electronic record that effects, or an electronic record and a physical document that together effect, the same transaction, whether directly or indirectly; and
- If the same transaction is effected whether directly or indirectly by verbal communication and an electronic record, the electronic record, but only if the transaction is concluded by means of the electronic record.

S60C of the Act as inserted by the Amendment Bill states that an electronic instrument that is concluded by electronic record is treated as executed when an electronic signature is applied to it. The time and place where the electronic signature is applied will be treated as the time and place of the execution of the electronic instrument. In the case of an electronic instrument that is concluded by physical document, it is treated as executed when the physical document is signed.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

The Electronic Transactions Act provides that “signed” or “signature” and its grammatical variations means a method (electronic or otherwise) used to identify a person and to indicate the intention of that person in respect of the information contained in a record.

Another important provision is **s60F** of the Act as inserted by the Amendment Bill, which states that an electronic instrument that is executed outside Singapore is received in Singapore if:

- It is retrieved or accessed by a person in Singapore;
- An electronic copy of it is stored on a device (including a computer) and brought into Singapore; or
- An electronic copy of it is stored on a computer in Singapore.

The time and place that an electronic instrument is executed and when an electronic instrument is considered received in Singapore are relevant as instruments executed in Singapore have to be stamped within 14 days after execution, and instruments executed outside Singapore have to be stamped within 30 days after first being received in Singapore.

The Amendment Bill is welcomed as it brings important clarifications to the current stamp duty framework.

- First, it clarifies when a document is deemed to be ‘received’ in Singapore. Currently, while the Act stipulates that an instrument executed outside Singapore has to be stamped within 30 days it is received in Singapore, it does not specify when an electronic instrument is deemed to be received. Previously, it was widely regarded that electronic versions of instruments will not attract stamp duty under the Act, and the liability to pay stamp duty arises when there is a physical copy of the instrument executed outside of and brought into Singapore. Thus, although a party in Singapore might have received the electronic copy of the executed version of an instrument, the 30 days time frame to pay stamp duty would not start running until that party had printed out the instrument, or the hard copy had been received in Singapore. Given that the circulation of documents via email upon execution is common practice, and the reality is that even where a document is executed outside Singapore, it is likely for parties in Singapore to have received it on the same day, it has become something of an anachronism for the time clock for stamping to only start running when the hard copy is received or when a party in Singapore prints out the electronic document. Viewed in this light, the proposed amendments seem merely to be catching up with the business environment that we have been living in for a while now.
- Secondly, the proposed amendments clarify when stamp duty must be paid in a transaction for the sale of immovable properties. S22 of the Act stipulates that in the case of immovable properties, stamp duty is payable on the agreement of sale. However, it is widely regarded that this refers to the physical contract of sale drafted by the parties’ lawyers and executed in ink by the parties. However, s60A of the Act as inserted by the Amendment Bill clarifies that electronic records can be treated as agreements for sale. Under s6(d) of the Civil Law Act, a contract of sale or other disposition of immovable property, or any interest in such property is only valid at law if it is in writing and it has been signed. In *Joseph Matthew and Another v Singh Chiranjeev and Another* SLR 338, the court held that

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

emails would satisfy the requirement of a contract being in writing and the name of a person in the from field of the email could be regarded as a signature for the purposes of s6(d) Civil Law Act. They found this consistent with a reasonable man's expectation that much business correspondence is carried out over email today. Thus, the court has already made clear that a valid agreement for the sale of the immovable property could be concluded by means of email. This would mean that on a literal reading of s22 of the Act, applying *Joseph Matthew*, the time for payment of stamp duty would start running if a binding contract for the sale of an immovable property had been concluded over email. Since s60A of the Act as inserted by the Amendment Bill clarifies that an agreement concluded over email can indeed be treated as an instrument for purposes of the Act, and s59 of the Act, as inserted by the Amendment Bill, defines an electronic signature to be any electronic method used to identify a person and to indicate the person's intention in respect of the information contained in an electronic record, the Amendment Bill will clarify the application of *Joseph Matthew* in the context of liability to stamp duty. Given that parties often come to an agreement over electronic records such as WhatsApp and email correspondence today, parties who want to avoid being liable to stamp duty before having a physical contract drafted and signed might have to carefully word their email correspondence as being 'subject to contract'. Parties may sometimes reach an agreement without first engaging legal advisors, and such parties may not be aware that an agreement over email correspondence can be stampable.

Apart from the clarifications above, the intent behind the Amendment Bill remains to be seen. In a statement released by the Ministry of Finance, it was stated that with more transactions being effected electronically, this move safeguards Singapore's revenue base. Currently, transactions involving the transfer of title in real estate and unlisted shares are required to be entered in public registers, and the transactions need to be stamped before they can be registered. Thus, the Amendment Bill might only affect the timing at which such transactions become stampable, rather than expanding the range of stampable transactions in a real sense. A share transfer typically is required by the constitution of the company to be in a common form. Share transfers are not commonly in electronic form as they still typically require to be physically delivered to the company for registration. S126 of the Companies Act talks about the need for a "proper" instrument of transfer needing to be delivered to a private company before a transfer can be registered and it is not clear that a company secretary would regard an electronic file as a "proper" form of transfer. Although one might contemplate an electronic record of a transaction that does not amount to a transfer of title to the share, that would amount only to dealing in some kind of equitable interest. The previous application of the Act to dealings in equitable interests in shares seems to have dropped out of the scope of the Act by virtue of the Stamp Duties (Agreements for Sale of Equity Interests) (Remission) Rules 2018 (although a declaration of trust would still be stampable).

The question has also been raised as to whether the Amendment Bill could be a futuristic provision, that contemplates the implementation of blockchain technology in the markets for transacting in real estate or unlisted shares. But does a blockchain necessarily identify a person (see above regarding the definition of an electronic instrument as executed when an electronic signature is applied to it and the definition of an

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

electronic signature as a method (electronic or otherwise) used to identify a person)? Perhaps we should conclude for now it remains to be seen how this space develops and the implication it has for taxation of transactions.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.