

WHAT IS THE LAW ON EXECUTION OF DEEDS UNDER SINGAPORE LAW AND HOW COULD THE LAW BE CHANGED TO ALLOW FOR ELECTRONIC DEEDS?

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This short update by Bill Jamieson and Goutami Sharma addresses the recent case of *Lee Yih Kang v Hsu Shih Hsun* SGHC(A) 9. A link to the original article can be found [here](#).

Electronic execution

The case concerned a deed of guarantee signed electronically by the appellant, Lee, without a witness. Lee sought to set aside a statutory demand served on him on the basis of the guarantee, arguing among other things that the deed had not been properly executed. At paragraph 51, the Appellate Division (Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD) noted that while Lee had referred to the circumstances under which he was pressured to sign electronically and to the omission of a witness's signature as evidence of improper execution, he did not dispute that he had in fact signed the deed and returned it to Goh LLC electronically.

At paragraph 52, Lee's counsel raised a new argument at the hearing of the appeal, not raised before the judge at first instance and not in the Appellant's Case, that as a matter of law the deed could not be enforced because it was signed without a witness. Counsel cited *Lim Zhipeng v Seow Suat Thin* 2 SLR 1151, but the court held that that case does not stand for this proposition at all. The argument was rejected as without merit and without any supporting authority.

At paragraph 53, the Appellate Division confirmed the applicable legal principle: there is no requirement at law for attesting witnesses to render a deed valid and enforceable, save in specific circumstances such as where statutory requirements apply, and there was nothing on the face of the deed that made witness attestation a condition of its validity. This is the *ratio decidendi* of the case.

Significantly, the court reached this conclusion in circumstances where it was common ground that the deed had been signed and returned electronically, without any qualification as to that mode of execution. At paragraph 54, the court went further, noting "for completeness" that Lee's argument that there was an absence of consideration was also without merit "as the guarantee was signed as a deed", a conclusion that presupposes electronic execution was sufficient to constitute the signing of a deed. The court added that, in any event, consideration was also independently stated in the deed under clause 1.3.

The paragraph 54 acceptance of electronic execution is properly characterised as *obiter dicta*: the court introduced it "for completeness" after the execution point had already been disposed of at paragraph 53, the issue of electronic signing was not directly argued, and an independent ground for the same conclusion (consideration under clause 1.3) was also available. The phrase "for completeness" is itself a well-recognised judicial signal that what follows is supplementary to the main reasoning. While *obiter* statements from the Appellate Division on a clearly reasoned point carry significant persuasive weight, the ambit of *Lee Yih Kang* is narrow. The challenge to execution at paragraphs 51 and 52 was confined entirely to the witnessing argument; no argument was advanced in relation to the sealing requirement or any other aspect of deed formality beyond attestation. The court therefore did not reason through whether electronic execution satisfies the common law requirements for a deed, and the implicit acceptance of

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electronic execution throughout must accordingly be read in that confined context. The decision does not provide appellate authority on any aspect of execution of a deed beyond the witnessing question, and practitioners should take care not to overstate its scope. That said, the implicit acceptance at paragraph 53, upholding the deed without any qualification as to its electronic form, is the first Singapore appellate-level indication that the common law does not itself preclude electronic signing of a deed.

The requirement for a seal

Lee Yih Kang does not disturb the analysis set out in our original article in relation to the sealing requirement. The Court of Appeal's statement in *Lim Zhipeng* at paragraph 37, that sealing remains a necessary requirement at common law, save to the extent it has been removed by statute (e.g., under section 41B of the Companies Act 1967 in relation to a Singapore company), was not raised, argued or addressed in *Lee Yih Kang*. Lee's challenge to execution at paragraphs 51 and 52 was confined entirely to the witnessing point; no argument was advanced that the deed lacked a valid seal. There was therefore no occasion for the Appellate Division to address, let alone revisit, the *Lim Zhipeng* paragraph 37 statement. The *Lim Zhipeng* paragraph 37 statement accordingly remains binding Court of Appeal authority. It is noteworthy that Woo Bih Li JAD, who delivered the Grounds of Decision in *Lee Yih Kang*, also sat as a member of the Court of Appeal in *Lim Zhipeng*. The fact that he saw no occasion to revisit the sealing analysis in a case where sealing was simply not in issue cannot be read as any implicit departure from it. If anything, the more natural inference is that the learned JAD saw no reason to disturb the sealing analysis he had joined in over five years earlier.

Estoppel

Our original article noted that a party may be estopped from denying the validity of an electronic deed under Singapore law, drawing on the estoppel analysis in *Lim Zhipeng* (at paragraphs 44 and 45) and *TCB Ltd v Gray* Ch 621. The decision in *Lee Yih Kang* does not, however, advance this analysis. At paragraph 54, the court observed that "it was immaterial whether Lee was estopped from denying the validity of the execution of the Deed as argued by Hsu", since the execution challenge had already been resolved at paragraph 53. The estoppel point was accordingly left expressly undecided. The estoppel analysis in our original article continues to rest on the reasoning in *Lim Zhipeng* at paragraphs 44 and 45 and *TCB Ltd v Gray* Ch 621. Estoppel remains a fallback position rather than a primary argument, and *Lee Yih Kang* should not be cited as having advanced or reinforced it.

Implications for this original article's thesis

The decision in *Lee Yih Kang* is consistent with and reinforces the argument made in the original article: that it is clear from cases such as *First National Securities* and *Lim Zhipeng* that the requirement for a physical manifestation of a seal is not an actual requirement of a deed under Singapore law. It is important to note

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that the deed in *Lee Yih Kang* was a personal guarantee between Lee (as guarantor) and Hsu (as creditor), and was a deed entered into between two parties. As the IMDA's 2019 Consultation Paper expressly recognised, an "indenture" for the purposes of the Electronic Transactions Act 2010 (the "ETA") is a type of deed made between two or more parties. On that basis, the deed in *Lee Yih Kang* was itself an indenture, and accordingly fell within the excluded categories in the First Schedule of the ETA. The Appellate Division's acceptance of its electronic execution as valid therefore occurred entirely outside the ETA's functional equivalence framework, at common law only, and without statutory support. Removing indentures from the ETA's excluded categories would provide the clear statutory foundation for the electronic execution of a deed of this character that presently does not exist, and would remove the uncertainty that currently requires parties to rely on the fact-specific application of unsettled common law principles.

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