Asia Pacific Guide to Lending and Taking Security - Singapore

Working digitally

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# 1. Is it possible for documents to be executed electronically (whether by the manual insertion of a digital signature or the use of an e-signing platform) under the laws of this jurisdiction? If so, is this limited to only particular types of finance documents?

Yes, the electronic execution of a document (including the insertion of a digital signature and digital signing using e-signing platforms) is valid under Singapore law for most contractual documents, as recognized by the Electronic Transactions Act 2010 (ETA).

However, there are various documents and transactions, which are set out in the First Schedule to the ETA, that are excluded from the scope of operation of the provisions in the ETA that enable electronic signatures to satisfy legal requirements for wet ink signature. The excluded documents include (1) documents for the creation, performance or enforcement of an indenture (i.e. a legal document that sets out rights and obligations of lenders and borrowers, or mortgagees and mortgagors); (2) documents that create a declaration of trust or power of attorney; and (3) the transfer of any interest in immovable property.

Declarations of trusts or powers of attorney are typically not executed as standalone documents in a financing transaction, but are embedded as provisions in financing documents such as security documents, which should be executed as deeds.

Under common law, the requirements for the formation of a deed are that the deed must be: (i) in writing; (ii) signed; (iii) sealed; (iv) attested; and (v) delivered. For borrowers who are Singapore companies, deeds may be executed by: (a) affixation of the company's common seal of the company in accordance with the terms of its constitution;1 or (b) without its common seal by signature of prescribed officials of the company.2 Attestation requires physical attestation, and witnessing over virtual means is not advisable. Given the requirement of physical attestation for execution of deeds by borrowers who are individuals and execution of deeds by borrowers who are Singapore companies (executing the deed by way of section 41B(1)(c) of the Companies Act or by way of affixing the common seal)3 and the inability to rely on the ETA for such deeds, "wet ink" signatures are thus required for such financing documents that are executed as a deed.

Mortgage over land

As a mortgage over land is a security document that involves the transfer of interest over immovable property, it is thus excluded from the scope of the ETA. Therefore, electronic signatures cannot be used as an alternative to wet ink execution of a mortgage over land. Further, mortgages over land require registration in Singapore, and the Land Titles Registry requires an original hardcopy of the mortgage instrument and original title deeds (if applicable) to be submitted for registration. Due to this requirement, the mortgage cannot be signed electronically.

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1. The constitution of most Singapore companies would provide that every instrument to which the common seal is affixed shall be signed autographically by a director and the secretary or a second director or some other person appointed by the directors.

2. Under section 41B of the Companies Act, a Singapore-incorporated company may execute a document described or expressed as a deed without affixing a common seal onto the document by signature:

on behalf of the company by a director of the company and a secretary of the company;

on behalf of the company by at least two directors of the company; or

on behalf of the company by a director of the company in the presence of a witness who attests the signature.

3. If the Borrower executes the deed by way of section 41B(1)(c) of the Companies Act with one director signing in the presence of an attesting witness, physical attestation would be required. In addition, if the Borrower executes the deed by way of affixation of the common seal, a physical copy of the document would be required to affix the common seal thereon.

# 2. Where the witnessing of a signing is contemplated, is it possible for the witness to verify the signature over a live video call?

It is not clear if virtual witnessing (i.e., witnessing a signing over a live video call) is valid under Singapore law. The present view is that witnessing requires physical presence in order to satisfy legal execution formalities. Witnessing over virtual means is not advisable.

# 3. Is it possible to register/perfect security electronically without wet ink signatures?

As mentioned in our answer to question 11 of the "If taking security" section, perfection refers to the requirement to give public notice of a security interest to enable the creditor to enforce its security right against third parties. The validity of perfection of security electronically in relation to a mortgage, charge, pledge and lien is set out below:

Mortgage

In general, a mortgage over assets created by a Singapore company must be lodged with ACRA and this can be done electronically without wet ink signatures. However, additional documents may need to be lodged in relation to particular classes of assets that cannot be signed electronically. For example, in relation to land, the Land Titles Registry requires an original hard copy of the mortgage instrument and original title deeds (if applicable) to be submitted for registration. Due to this requirement, the mortgage cannot be signed electronically.

Charge

A charge that is created by a Singapore company incorporated in Singapore (or the branch of a foreign corporation registered in Singapore) and to which Section 131 of the Companies Act applies must be registered with ACRA. This can be done electronically without wet ink signatures.

Pledge and lien

With regard to the perfection of certain pledges and liens, giving notice to and obtaining acknowledgement forms from the applicable third party can be done electronically without wet ink signatures.

# 4. Are there any other legal restrictions that may prevent the parties from executing a finance transaction electronically?

Please refer to our answers to questions 1 to 3 of this section above.

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