Singapore’s Legal and Policy Environment for E-commerce

The Singapore government believes that the growth of electronic commerce requires transparent, market-favourable regulation and legislation in certain areas. The legal, regulatory and business environments required to support industry development and growth in the digital economy are also significantly different from those needed for traditional enterprise. This presents challenges to the government, who must adapt national and international policies to the new digital economy. We must ensure that our laws, which are designed for an earlier and different era, do not unnecessarily impede the development of new and innovative services. Regulations are necessary to the extent that they do not hamper growth of new or existing markets. New regulations should also be flexible enough to cater for technology changes and new global policy. In other areas, the government encourages industry self-regulation where industry practices are aligned with international practices.

Singapore has introduced a number of e-commerce policy initiatives. The E-commerce Hotbed Programme was introduced in 1996 to develop the e-commerce legal and technical infrastructure, and e-commerce services. In 1998, the Electronic Commerce Master Plan was published. This aims to bring e-commerce to develop Singapore as an international e-commerce hub (building upon its established strengths in international trade, international financial services, telecommunications and IT systems). It also aims to create an e-commerce services sector, and to harmonise cross-border e-commerce laws and policies.

Basic legal and technical infrastructures to support secure and reliable e-commerce have been in place since 1998.

- Electronic Transactions Act
- Intellectual Property Rights
- Amendments to the Evidence Act
- Content Regulation
- Tax Issues
- Import and Export Procedures

**Electronic Transactions Act**

In July 1998, the Electronic Transactions Act (ETA) was enacted to provide a legal foundation for electronic signatures, and gives predictability and certainty to contracts formed electronically.

Singapore is one of the first countries in the world to enforce a law that addresses the issues that arise in the context of electronic contracts and digital signatures. The Electronic Transactions Bill was introduced in Parliament on 1 June 1998, and passed on 29 June 1998. The Act came into force on 10 July 1998.

The Singapore Electronic Transactions Act (ETA) follows closely the UNCITRAL Model Law on Electronic Commerce, which is setting the framework for electronic laws in many countries. When the ETA was enacted, the Gardner Group
even hailed Singapore's ETA as an "Asian Road Map for E-Commerce".

The ETA addresses the following issues:

a. Commercial code for e-commerce transactions - The commerce code for electronic transactions was enacted in order to create a predictable legal environment for EC and clearly define the rights and obligations of the transacting parties. It also deals with legal aspects of electronic contracts, use of digital signatures, concerns for authentication and non-repudiation.

b. Use of electronic applications and licences for public sector - In order to promote a culture of use of electronic transactions in the public sector, the ETA contains an omnibus provision through which Government departments and statutory boards can accept electronic filings without mending their respective acts. It also allows public bodies to issue permits and licences electronically.

c. Liability of service providers - Singapore recognises the importance of service providers in providing information infrastructure and content. The government also realises the impracticality in having service providers check all content for which they merely provide access. To create a transparent legal environment conducive to the growth of service providers, the ETA specifies that service providers will not be subject to criminal or civil liability for such third-party material. The clause, however, will not affect the obligations of a network service provider under any licensing or other regulatory regime established under the law.

d. Provision for a Public Key Infrastructure (PKI) -Singapore has been developing a Public Key Infrastructure as a foundation for a trusted and secure environment in electronic commerce. In line with the PKI development, the ETA provides the appointment of a Controller of Certification Authorities (CAs) to enable regulations to be made for the licensing of CAs including cross-certification of foreign CAs (please see inset).

**Intellectual Property Rights**

In order to strike a balance between the protection of rights for copyright owners and increased public access to intellectual property, Singapore has ensured that its intellectual and copyright laws are harmonised with underlying principles in global IPR laws.

On September 1998, Singapore acceded to the Berne Convention for the Protection of Literary and Artistic Works. Consequently, works first published in Singapore, as well as works created by citizens and residents of Singapore will be entitled to copyright protection in more than 100 countries which are parties to the Berne Convention.

There have also been new proposed changes to the existing Copyright Act. The Copyright (Amendment) Bill 1999 was given Presidential assent on 24 August 1999. The Bill reinforces Singapore's commitment to ensure that its intellectual property laws concur with underlying principles in the World Intellectual Property Organisation Copyright Treaty 1996 and the World Intellectual Property Organisation Performances and Phonograms Treaty 1996. The proposed amendments to the Copyright Act aim to
a) Improve copyright protection and enforcement measures for copyright owners in the digital environment, thus promoting the use of the Internet for business.

b) Promote legal certainty in the usage of the Internet by clarifying the rights and obligations of copyright owners, intermediaries such as network service providers and users such as educational institutions.

**Amendments to the Evidence Act**

The Evidence Act was amended in 1997 to allow the use of electronic records as evidence in the courts.

**Computer Misuse Act**

The Computer Misuse Act define a class of critical computer systems and provide them with greater protection.

To deal with new potential abuses of computer systems, the Computer Misuse (Amendment) Bill 1998 was introduced in Parliament on 1 Jun 1998. It was passed on 29 Jun 1998 and came into force on 1 Aug 98. The amended act takes a more sophisticated approach to provide for enhanced penalties proportionate to the different levels of potential and actual harm caused. It also addresses new potential computer abuses such as denial or interruption of computer services and unauthorised disclosure of access codes.

**Content Regulation**

Singapore has a 3-prong approach to Internet content regulation. First, a light-touch class license scheme which provides minimum standards to safeguard values and promote healthy growth, second, encouraging industry self-regulation, and third an active public education programme to promote parental supervision. The class license scheme is an automatic licensing scheme that requires IASPs and content providers to comply with an Internet Code of Practice. IASPs are not required to monitor or censor Internet content. They are however, required to limit public access to 100 mass impact pornography sites, as a statement of our values as a society. Personal communications, such as email or Internet relay chat, personal websites and corporate Internet use by employees or for business transactions are not regulated.

See:

SBA (Class License) Notification, 15 July 1996
SBA Internet Code of Practice, 1st November 1997.

**Tax Issues**

There are two areas of tax laws in relation to e-commerce, Income tax and Goods and Services Tax (GST).

Whether or not a company needs to pay income tax on its business activities conducted on the web very much depends on the broad principle of an operations test. This implies that if any internet based operation based in Singapore which is deemed to be revenue generating center is liable to be subjected to income tax.

As to whether or not a business selling goods over the Internet needs to charge
GST, the same laws which exist in the offline world apply. In particular, if you are a registered GST trader, you will necessarily need to charge GST for goods delivered to a local location. In the case of goods which are shipped overseas, these may be zero rated provided you maintain the necessary documents.

Supplies received from overseas exceeding $400 in value attract GST. The list of exceptions which can be zero rated can be found under Section 21(3) of the GST act. Additionally, digitised goods imported from overseas do not attract GST, regardless of value.

IRAS has undertaken to clarify certain tax issues in matters of e-commerce. In its efforts, it has released the following papers,

"GST guide on ecommerce"
"Income Tax guide to ecommerce"
"Keeping of Records in Imaging Systems"
"Keeping Machine Sensible Records and Electronic Invoicing".

These papers are available online at the IRAS website, see: www.iras.gov.sg

**Import and Export Procedures**

The current regime of import and export regulations and procedures applies. Please refer to TDB’s website for more information: http://www.tdb.gov.sg/ieinfo/importexport.shtml

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