The Impact of the Singapore Electronic Transactions Act on the Formation of E-contracts

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Since the mid 1990s, interest in the commercial use of the Internet continues to grow at a phenomenal rate despite some potentially difficult questions of law that remain unclear. However, it is now commonly agreed that for web commerce to continue growing, many of these issues need to be overcome. Many common law rules of contract when tested in the digital environment strain to remain effective while others are able to remain unchanged. One primary question is: how do electronically formed contracts affect the established rules of contract formation and enforceability? Fortunately, this and several previously regarded grey areas have since been clarified with the enactment of the Singapore Electronic Transactions Act 1998 (‘ETA’).

In this paper, we address the issues raised by contracting in an electronic environment on the Internet, focusing especially on the formation and enforceability of such contracts. As the use of Internet tools, such as the e-mail and the World Wide Web become an accepted norm in business communications, we will examine the various Internet tools used in contracting and the potential contractual issues involved.

Governments all over the world have recognised that their economies need to be ready for the Internet technologies being adopted in their industries. To remain competitive and survive the dramatic changes, efforts have been taken to quickly remove the barriers to electronic commerce. New legislation had been enacted to provide for an effective legal infrastructure for electronic commerce. For instance in the US, the Federal government enacted the Electronic Signatures in Global and National Commerce Act to create a national system of adopting electronic signatures. In Europe, the European

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1Extracts of the relevant provisions are found in the Appendix here. This paper is only dealing with electronic contracting while the ETA was designed a standalone law covering a wide spectrum of issues dealing with networks service provider liability, electronic records, secure electronic records, electronic signatures, digital signatures, digital signature certifying authorities and the government use of electronic records.

2Commonly referred to as the ‘E-Sign Act’.
Commission passed an electronic signature Directive that also adopts a framework for electronic signatures for their member countries. As of end 2000, 27 countries have enacted or proposed similar type of legislation.

Also with the proliferation of many technology standards, recent developments by governments to regulate e-commerce was tempered by the understanding that the laws had to be technology neutral. As a result governments have realised as well that there is a need to harmonise the approach to the development of the law that affects electronic commerce. The most influential effort to date is the Model Law of Electronic Commerce published by the United Nations Commission on International Trade Law (UNCITRAL) and its accompanying Guide to Enactment.

The Electronic Transactions Act 1998

The law of contract is a common law development that has taken many years to reach its current matured state. Although many of the rules seem archaic by comparison to the current technologies, many principles remain true in the electronic environment. The Singapore Electronic Transactions Act 1998 (No. 25 of 1998) (the “ETA”), passed on 10 July 1998, was specifically adopted with the intent of resolving the legal concerns arising from new technologies that affect online business. The ETA is a hybrid piece of legislation that was influenced by legislation from several countries.

The ETA is primarily referenced in this chapter for its provisions on electronic data records, signatures and contracts. The ETA has a wide ambit that includes provisions relating to the Liability of Network Service Providers, Digital Signatures, Duties of Digital Signature Subscribers and Certification Authorities.

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Australia, Austria, Belgium, Brazil, Columbia, Czech Republic, Denmark, Ecuador, Finland, France, Hong Kong, India, Ireland, Israel, Italy, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, Singapore, South Korea, Spain, Thailand and the UK.


5Ibid.

6The ETA can be viewed at http://www.ida.gov.sg.

7The Illinois Electronic Commerce Security Act; Utah Digital Signature Act; Florida Electronic Signatures Act; German Federal Law to Regulate Conditions for Information and Communication Services and the UNCITRAL Model Law for Electronic Commerce.

8The Model Law is available to the public by Internet access at http://www.uncitral.org. Other sources for the ETA included the Illinois Electronic Commerce Security Act; and Utah Digital Signature Act.
While the ETA does not in any way change the current principles of contract law, section 3 ETA provides that the purposes of the Act was to facilitate electronic communications; eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements; and to promote the development of the legal and business infrastructure necessary to implement secure electronic commerce. It succeeds in this effort without making immense change to the established law of contract.

While the ambit of the ETA was intended to be cast wide over commercial activities, several types of documents and agreements are excluded. The Act specifically provides that the creation or execution of a will; negotiable instruments; indentures; declaration of trust or power of attorney with the exception of constructive and resulting trusts; the contract for the sale or other disposition of immovable property, or any interest in such property; the conveyance of immovable property or the transfer of any interest in immovable property; and documents of title are excluded.\(^\text{10}\)

**Is an Electronic Contract Enforceable?**

The novel change brought about by the ETA is that a electronic contract will not be invalid just because it took place by means of one or more electronic record.\(^\text{11}\) It also provides specifically that where the formation of contracts are concerned, the general rule is that offers and acceptances can be expressed electronically.\(^\text{12}\) These provisions brings about necessary clarity to some of the controversies previously surrounding electronic contracting. It establishes the validity of the electronic form of record pertaining to contract formation. There are other inherent issues relating to electronic contracting that merits further investigation as to its effect on the common law rules of contract formation.

**Elements of a Contract**

Traditional contracts are defined as agreements that give rise to obligations which are enforced or recognised by law. A contract is formed only when the necessary elements are in place. These elements are:

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\(^\text{10}\)Section 4 of the Act provides that Parts II & IV of the Act shall not apply to any rule of law requiring writing or signatures.

\(^\text{11}\)Section 11(2). In the ETA, ‘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.

\(^\text{12}\)Section 11(1).
• an offer by one party; and
• acceptance by another of those terms;
• an intent to enter into legal relations;
• an exchange of valuable consideration; and
• parties to the agreement have the legal capacity to contract.

In some circumstances, certain types of contracts are required by law to be in a certain form such by deed or in writing to be enforceable. In any event, chronologically, the moment of contract formation occurs when there an offeror (party giving the offer) receives the unequivocal acceptance of his terms by the offeree (recipient of the offer).

In contract law, an offer is an expression of willingness to contract on certain terms made with the intention that upon acceptance by the offeree, a binding agreement is formed. The terms in an offer must clearly indicate either expressly or implicitly that a binding contract is formed as soon as the offeree accepts it.

In contrast to offers, there are invitations to treat where the maker of the statement does not have the clear intent to be willingly bound without further negotiations. ‘Invitations to treat’ are merely offers to negotiate and therefore not binding.

Whether a statement is an offer or an invitation to treat must depend on how the words are being used to show the offeror’s intention. Notwithstanding, there are categories where statements are prima facie mere invitations to treat, i.e. advertisements and circulars, shop window displays and display of goods with prices.

Goods on display in a shop are generally not ‘offered for sale’. Instead, it is the potential buyer who makes the offer by presenting the item at the cashier and tendering payment. The store owner will then decide whether to accept the potential buyer’s ‘offer’. Again, the question is ultimately one of intention, although it is generally accepted that advertisements made in newspapers and magazines and goods displayed in shop windows are mere invitations to treat.

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13Also alternatively referred to as invitations to contract or negotiate.
14Carlill v. Carbolic Smoke Ball Co [1892] 2QB 484. Bowen LJ said “It is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell, or houses to let, in which case there is not offer to be bound by any contract. Such advertisements are offers to negotiate – offers to receive offers – offers to chaffer.”
18Interestingly, in Farnsworth on Contracts, 3.10 (1990) – a US textbook on Contract Law argues that phrases such as ‘first come first served’ and ‘while they last’ will suffice to turn an ordinary advertisement into an offer. Also, generally where the offeree is provided with the power of acceptance then the statement provided by to him will be an offer. The fewer terms left undone or unsaid in an advertisement the more likely a court will conclude that the advertisement is an offer.
The information in these types of communication lacks the sense of absolute intent necessary to have a binding agreement. The statements made by these communications lack the necessary final and conclusive intent of a binding offer in the sense that the offeror is willing and able to sell to all and sundry without any reservation.

An important rule of offers states that an offer can only be accepted by the person to whom the offeror intended to give the offer. The exception to this rule is a unilateral contract offer which is essentially a binding offer to a class of persons or even the whole world where the acceptance is usually the performance of specified conditions. Offers are binding upon the offeror until it is lapsed or withdrawn.

An acceptance is a final and unqualified expression of assent to the terms of the offer, made in the manner specified or indicated by the offeror. Generally as a matter of principle, the offeree is required to communicate to the offeror his notice of acceptance. No contract is formed if there is no notice; except in unilateral contracts where the offeree need not communicate the acceptance of the offer.

The Main Issues in Formation of E-contracts

With online electronic communications, the phenomena of the electronic versions of the elements of offer, acceptance and legal intent coming together are never precisely clear as the reader will see. Accordingly, the main issues of electronic contracts concerns mainly:

1. the time of formation of contract;
2. the place where the contract is formed;
3. the compliance of legal formalities for specific contracts;
4. the use of automation or electronic agents by merchants; and
5. the use of electronic evidence in civil proceedings to prove the existence of a contract and/or what were the terms agreed.

Using Electronic Communications for Contracting

An electronic contract for our purposes can be defined as an agreement in which both the terms of the agreement and the action taken to indicate that an agreement had been formed occurred electronically through computer generated messages or other similar electronic means. Whether the courts will agree with this definition of an electronic contract will be dependent on its interpretation of the scope of the ETA in relation to electronic contracting and transactions.

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19As in the case of Carlill v. Carbolic Smoke Ball company.
Even before discussing the issues of an electronic contract, it is necessary to determine the acceptable forms of electronic communications for making an agreement. In the ETA’s preamble, it was made clear that the Act was intended to deal with electronic transactions. It was provided there that it is “An Act to make provisions for the security and use of electronic transactions and for matters connected therewith . . .”.20 Further, in section 2 of the ETA, an electronic record “...means a record generated, communicated, received or stored by electronic, magnetic, optical or other means21 in an information system or for transmission from one information system to another.”22 Notably, the use of the phrase ‘electronic record’ is an obvious detour from the UNCITRAL Model Law on Electronic Commerce (the ‘Model Law’) that used ‘data message’ instead.23 Unlike the ETA, in the Model Law, the older technologies of the telegram, the telex and the telecopy are specifically mentioned as a means to deliver a data message.24

**Time of Communication**

Internet technologies are essentially communications technologies where information is created, sent, received, stored and accessed in electronic form. Accounting for the time in which the information is sent, received and accessed is made more difficult by the technologies used (e.g. servers, routers, TCP/IP, packet switching, client and server, etc.).

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20In the Long Title of the ETA with emphasis added. Unfortunately, the Act does not define what constitutes an ‘electronic transaction’.

21The use of ‘other means’, the author submits, may give rise to potential issues as the usual words would be ‘other similar means’. However, with the convergence of technologies, for example non silicon or magnetic based information technologies such as nanotechnology or nano-machines and cellular circuits that has the capacity to generate and store information, could arguably be covered by this definition of an electronic record.

22Unfortunately ‘information system’ is not defined in the ETA as well. However, the UNCITRAL Model Law on Electronic Commerce defined “Information system as . . . a system for generating, sending, receiving, storing or otherwise processing data messages.”

23In the UNCITRAL Model Law on Electronic Commerce, ‘data message’ means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy; (emphasis added).

24It remains to be seen the effects of the exclusion of these specific technologies in the ETA. With the rate of convergence of technologies, it is already commonplace to find computers with faxing solutions and Fax machines that are highly configurable with components that could easily describe them as information systems.
For example, to describe a simple process of an e-mail delivery, an e-mail written and sent out by Smith for Jones will first be sent from the desktop client to the mail server on the network. The e-mail is then processed by the mail server to be sent out to Jones e-mail address in the form of electronic packets. When it arrives at Jones’s e-mail server, it resides on the server until it is accessed. The actual moment of despatch or receipt of electronic mail or electronic records was uncertain in law until the enactment of the section 15 provisions in the ETA.

**Time of Despatch**

The section 15 of the ETA provides that the time of despatch of an electronic record “occurs when it enters an information system” outside the control of the sender. Technically, this would mean that an electronic mail or record is not deemed despatched at the time when the sender hits the send button on the e-mail client software.

E-mails are managed differently between organisations. Some servers are configured to deliver the e-mails as soon as they receive them in the e-mail server while others deliver them in batches to lower operational costs. Under the ETA’s section 15(1), the moment of despatch occurs only when the e-mail server sends them out into another information system which they have no control.

**Time of Receipt**

As for the time or moment e-mails and electronic records are received, section 15 provides several alternatives depending on the parties’ choices. First, where an addressee specifies or designates where the electronic mail or record is to be sent, receipt occurs when the mail or record enters the designated information system. However, if the e-mail was not sent to the designated address but to another address, the time of receipt is when the e-mail or record is retrieved by the addressee. If the addressee did not specify or designate an address for the e-mail or record, then receipt occurs when it enters the information system of the addressee.

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25There is an ambiguity to the meaning of ‘enters an information system’ in this section. It is unclear whether the section is intended to provide for the electronic record to enter into the addressee’s e-mail server to be deemed to have had ‘entered an information system’. Alternatively is the mere departure of the electronic record from the sender’s e-mail server into the Internet be deemed to be entering an ‘information system’?

26Or the control of the person who sent the electronic record on behalf of the originator.


29S.15(2)(b).
It is also deemed under section 15 that an electronic record is to be treated as despatched at the place where the sender or originator has its place of business, and that it is received at the place where the recipient or addressee has its place of business.

A. Electronic Negotiations – Offer

Making an Effective Electronic Offer

A web site, e-mail message or newsgroup message in which goods or services are described as available for sale or purchase has the potential to become either an invitation to treat or an offer. There may be uncertainty as to whether a statement made is intended to be an offer, the acceptance of which brings a contract into existence; or merely an invitation to treat, inviting offers from potential buyers. The question is whether the relevant parts of the web page or the e-mail or usenet message are worded to show a willingness by the trader to enter into an agreement and not just to invite offers to treat from readers.

E-mail Messages of Offer

Businesses have taken to the use of electronic mail as a means of communications as much as the telephone. Accordingly, it is also inevitable that businesses will use Internet technologies, as with the telephone, telex and facsimiles, to negotiate and finalise all types of contracts.

Electronic mail is a network service that enables users or subscribers to transmit or send and receive messages with other users. The ‘other users’ may be on a private network such as a local area network, or if the connection allows, users may be from other parts of the world who are also connected to the Internet (public network). The e-mail facility can be used to send individual messages or broadcast messages to electronic addresses found in private databases. A simple use of e-mail for commerce is where customers e-mail e-businesses requesting for product information and the stores reply via e-mail the price and requested information for their goods or services.

Owing to the nature of e-mail technology, e-mail users can:
1. store or record their messages either electronically or in print versions of the e-mail message;
2. delete e-mails sent and received from others; and
3. users may also alter the text of any e-mail messages previously sent or received.

The possibility of having e-mail messages altered without trace can cause
difficulties for parties in determining the precise terms of agreement. Further, while many enjoy the relatively efficient delivery of e-mail to its intended destination, e-mails do get lost or garbled in transmission. Also, in many instances, while e-mail delivery is generally quick, it has been known to take hours due to the configuration of e-mail servers.

In using e-mail to communicate and negotiate agreements, apart from the issues mentioned above, about the ease in which the text of an e-mail can be changed, the content of e-mails do not pose a legal problem. The contents of e-mail messages are to be treated as if they were in written form even though it is purely electronic in form.30

Automated E-mail Replies

One of the most attractive aspects of e-commerce is that businesses are running 24/7 – 24 hours a day 7 days a week – as many of the business transactions are now highly automated at a relatively low cost. While the computer is able to deliver e-mails seamlessly without human intervention, it was once doubtful if information systems were able to legally contract.

This issue was resolved in section 13 of the ETA. In this provision, electronic records are attributed to the originator of the record regardless whether the record was created by a human agent31 or an information system programmed by or on behalf of the originator to operate automatically. Following this line of argument, an automated response is not binding on the originator, nor does it potentially binding the originator to contracts with persons and customers they may never meet.

However, not every automated response from an e-business will culminate in an enforceable offer or acceptance as it is highly dependent on the established terms and conditions (if any) of the e-business.

Automated E-mail Quotations and Pricing

Does an e-business’ e-mail reply to an e-mail query constitute a contractually binding offer? If the reply merely provides a quotation or price, the answer is clear as the situation is analogous to Harvey v. Facey33. In this case, it was held that the merchant’s telegraph message setting out its quotation was merely a statement as to price and not an offer.

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30s.11 ETA.
31S.13(2)(a)
32S.13(2)(b)
33[1893] AC 552.
If the e-business had made statements that change the complexion of their e-mail reply, then there may arguably be an offer. How does an e-mail message providing information inadvertently become an offer? In some instances, the statements in an automated e-mail reply may either expressly or implicitly indicate an offer and the intention to create legal relations. The cause of this controversy lies in the e-business practice of setting out in fine detail the terms and conditions of their online contracts including payment methods. If such terms and conditions were sent with the e-mail reply, it is arguable that by the incorporation of such terms and conditions, the e-business can be objectively described as having made clear its terms of offer.

**E-mail Broadcast Offers of Sale**

One feature of e-mail is the ability to broadcast a message to various recipients or e-mail addresses. How will contract law treat the receipt of a broadcast offer of sale from an e-business? Whether a broadcast message will become an offer will again depend on two factors:

First, whether the wording of the statements made in the ‘offer of sale’ was in fact an offer in law or mere invitation to treat; and

Second, whether the law treats a broadcast e-mail message as an advertisement or circular. If upon the review of the courts that such a broadcast message is to be construed as *prima facie* merely an advertisement or a circular akin to newspaper classifieds, then such messages will only be an offer to negotiate and not a binding offer. This, however, remains to be seen as it is yet untested in court.

**Posting E-mail Offers of Sale on Newsgroups or Lists**

When an e-business posts an e-mail message or advertisement setting out an offer of sale to a newsgroup or list for public viewing, how will the law treat the message if an Internet customer wishes to contract? The manner in which the courts will treat the e-mail will likely be similar to a broadcast e-mail, i.e., to determine whether the message falls within one of the existing categories of ‘invitations to treat’ and whether the words used had in fact showed the e-business’ willingness to be bound.

**Web Pages of E-businesses**

E-businesses and e-mERCHANTS will inevitably have abundant information on their web sites regarding their products or services. The information can be

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34See note 4.
in the form of text, static pictures or moving pictures. In many cases there will also be sound, whether spoken or as music accompaniment.

E-mail employs push technology in the actual delivery of digital bits of information from sender to the addressee via computer. In contrast, web pages work on the basis of pull technology and are digital information stored in a web server storage. Until a user visits the site and requests for the web page, it is not delivered to the user’s web browser. Within a web server or a merchant’s web site, even the simplest of merchant sites, there are high levels of automated digital information.

A web site containing advertisements is similar to advertisements published in newspapers or magazines. Also, the concept of virtual shopping purports to replicate the experience of walking through a mall, looking into shop windows and entering the shop and making an offer to buy. We may conclude that such web sites do not constitute offers but mere invitations to treat and when a response has been made via electronic mail or message, that response constitutes an offer.

However, it does not mean a web site can never be construed as making an offer, since the test is ultimately one of intention. An e-Business may well have intended to be contractually bound once it receives an e-mail response (being an acceptance) from a site visitor or customer (e.g. when the owner sells digital material). This is especially so if the e-business wants to ensure that its tax laws and other relevant laws applies. For example, in a cross border transaction, a merchant in Country A sells books over its web site to a customer in Country B. The web site offers the book to the customer at a certain price (presuming that it intends for it to be a contractual offer). When the customer indicates his acceptance by sending his electronic acceptance to the offer. As the law of contract provides that the place of contract formation is where the acceptance of an offer is communicated, the merchant has a strong case that Country A has the jurisdiction over the agreement. If however the customer from Country B is the offeror who receives the acceptance from the merchant in Country A, then the contract would be deemed to have been formed in Country B.

In any event to avoid uncertainty, the company advertising its products on the Internet should include a clear statement stating whether it is an offer or whether the buyer’s response constitutes a legal offer as well as setting out its choice of jurisdiction and governing law.

Generally, the e-business wants to be able to decide:
1. with whom it wants to trade;
2. how much it wants to deliver; or
3. where it wants to make the delivery.

For these reasons, an e-business is more likely to design its message or web site information to be in the form of an invitation to treat rather than as an offer.
However, it might be argued there is a clear offer especially when web sites are designed to carry full descriptions of the goods, with photographs of the goods in the fashion of a catalogue or window display. The problem is in addition to such information, there are prices, payment mode and other terms and conditions which may result in the site making an offer, for which a potential Internet customer may accept. The customer may respond via a built-in web device such as an e-mail reply form providing credit card information. The customer can also key in certain details and a password in conjunction with a Smart Card inserted into a Smart Card Reader which is attached to a computer. Or he may simply telephone, fax or send a letter with a cheque in payment.

Revocation or Withdrawal of an Electronic Offer

It is a basic principle of contract law that an offer may be withdrawn at any time before it is accepted, but this withdrawal is only effective when it reaches the other party. However on the Internet, if a customer wishes to withdraw the offer, the withdrawal must be made before the e-business despatches the goods or sends the acceptance message by e-mail. This can be a serious technical challenge for the uninitiated.

The customer should also realise a real risk of a delay in the transmission of an email message of revocation. With this in mind, alternative and immediate means should be taken to ensure the e-business receives the withdrawal notice before an acceptance is made.

It should be noted that whilst the rules regarding offers and withdrawals of offers will probably remain unchanged in the Internet environment, the situation for the rules governing acceptances is quite different.

B. Electronic Negotiations – Acceptance

Acceptance in an Online Environment

An acceptance is a final and unqualified expression of assent to the terms of an offer, made in the manner specified or indicated by the offeror. Generally, the offeree is required to communicate to the offeror his notice of acceptance. If no notice is given, no contract is formed.

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35 Possibly under a Secure Sockets Layer Session in the Web browser.
36 Unless there had been some payment to keep it open like an option.
37 Byrne v. Tienhoven (1880) 5 CPD 344. Under the Vienna Convention Art 16(1), the offer can still be withdrawn if the revocation is received by the offeree before the acceptance is sent out.
38 Entores Ltd v. Miles Far East Crp [1955] 2 QB 327.
In the online environment, when an online customer makes an offer to purchase a product and the e-business agrees to sell, when does acceptance occur?

An e-business has four possible ways to convey its acceptance:

i) by sending an e-mail or web-mail message of acceptance to the offeror; or

ii) by delivery online of an electronic or digital product or service; or

iii) by delivery of the physical product; or

iv) by any other act or conduct indicating acceptance of the offer.

Why is it important to determine precisely when acceptance occurs for an online contract? Until the moment the contract is formed, both parties have the right to withdraw from the agreement without any liability. Conversely, the existence of a binding contract between the same parties is arguable if an offeror were unable to withdraw the offer for whatever reasons.

**Acceptance by E-mail or Web-mail**

Where the acceptance is conveyed by e-mail, can an e-mail message constitute as an acceptance; and if so, when does acceptance occur? Does acceptance occur when the e-mail acceptance message is sent out from the offeree’s e-mail out-box, when the offeror actually reads the e-mail message, or is it any other time in between?

The general rule mentioned here several times states that a contract only comes into being when and where an acceptance of an offer is communicated to the offeror. Communication, a legal term of art, means the addressee must have been able to take notice of the acceptance in question. This rule applies to instantaneous modes of communication such as those made verbally, by telephone, by telex or by fax. Similarly, under the civil law systems as

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39For example, the merchant’s online transaction process does not provide an e-mail address or a person as a point of contact for the customer to communicate his possible wish to withdraw his offer. This would be grounds to argue that the merchant is intending to be bound to the contract immediately upon the receipt of the offer.

40Entores Ltd v. Miles Far East Ctr (1955) 2 QB 327.

41Ibid. It was also decided in Mondial Shipping BV v. Astarte Shipping (1995) Commercial Cases 1011, that a telex sent after office hours is deemed to be received when business recommences on the next working day when it is presumed that it would be read and not when the message is actually read. Note also that confirmations by answerback in telex communication is normally evidence of receipt by the recipient.

42Brinkibon Ltd v. Stahag Stahl und Stahlwarenhandels GmbH [1983] 2 AC 34. In Australia, the Supreme Court of New South Wales Court of Appeal applied the Entores rule to a fax, holding that an acceptance sent by instantaneous fax is effective at both time and place of receipt, Reese Bros Plastics Ltd. v. Humon-Sobeco Australia Pty Ltd., (1988) 5 BPR
well as the Convention of International Sale of Goods (CISG), acceptance only occurs when it is received by the offeror. It is therefore incumbent on the offeree when using such technologies to ensure the acceptance message got through to the offeror.

There is a view that the general rule will apply in Electronic Data Interchange (EDI) agreements where the communications link is direct between the parties. If all e-mail messages are forwarded immediately to the addressees when sent, the rule will apply to contracting online and the contract will be formed upon delivery of the e-mail. However, if the e-mail or Internet service provider stores the acceptance messages from the e-business for an appreciable period, the result may be different. In Internet communications, the rule is unlikely to apply as the Internet relies on third parties like commercial online services or the local network servers to manage the flow of e-mail communications.

So when does common law contract recognise a valid acceptance online?

**The Mailbox or Postal Acceptance Rule**

In common law contract, when a postal service is used for the delivery of an acceptance, the ‘mailbox’ or postal rule applies. The rule provides that if the acceptance is in written form and parties use the postal service for communications, the acceptance takes place when the letter is posted, regardless when the letter actually arrives. The mailbox rule only applies if it is reasonable to use the post and this is normally the case if the offer itself is

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44Where there is no third party intermediary that acts like a post office in the transmission (where there is a delay in processing the messages) and especially storage of electronic data communications.
45In some instances the delay may be mere seconds to several hours dependant on the configuration of the e-mail servers and the Internet traffic.
47Adams v. Lindsell (1818) 1 B&Ald 681; Household Fire Insurance Co. v. Grant (1879) 4 ExD 216. Note, an acceptance is ‘posted’ when it comes into the control of the Post Office.
made by post. On the other hand, it is clear that where negotiations was by way of instantaneous communications such as the telex, fax or telephone means it falls outside the ambit of the mailbox rule and that the ‘receipt rule’ applies. However, does the mailbox rule apply to online e-mail acceptances?

The Instantaneous Communications or Receipt Rule

Under the receipt rule, a contract is only binding when and where the communication of acceptance of the offer is received by the offeror. For negotiations using telex, fax or telephone, the mailbox rules does not apply. This is because the offeror will often know immediately if the attempt to communicate was successful. Likewise, the offeree will know at once if communication has failed, so that he will need to re-establish proper communication.48

Unlike these technologies, Internet communications is not a point to point connection like a telephone or fax. Due to the packet switching technology that relays information in packets that arrive at their destination by way of routers that direct the flow of the packets. When all the packets arrive at their destination, they are usually stored at the Internet connection in the mail server for a short period before delivering them to the addressee’s mailbox. Under such circumstances the intermediaries such as the remote servers, routers and switches appear to behave like Post Offices delivering the e-mail to various mailboxes. So while e-mail may appear to be very quick and near instantaneous, much of the technical activity does not lend itself easily to be classified as a form of instantaneous communication. However to treat the technology as if it was like the postal service would also not sit easily. Hence, the applicability of the mailbox rule to electronic messages remains uncertain.49

How it is important to ascertain carefully which rule is to be applied as it will determine the place of contracting — hence the jurisdiction — for cross border agreements. For example, if a merchant’s e-mails or website is structured to clearly be an invitation to treat (which would be the usual intent of merchants), and IF the mailbox rule applies, then the place of contract formation is at the merchant’s website when it delivers its electronic acceptance to customers. However if the mailbox rule does not apply, then the place of contract formation is when the acceptance is received by the customer.

48Entores, above n. 41, 333.
49It is therefore suggested that to avoid such inconclusive outcomes that businesses should consider excluding the mailbox rule in their online terms and conditions.
Time and Place of Acceptance

To help avoid such uncertainty, parliament enacted a provision in the ETA to provide some clarity to the inherent problems. Section 15 deals with the time and place of despatch and receipt of electronic communication (notably not about contract offers and acceptance). Section 15 of the ETA specifically provides that unless otherwise agreed, the receipt of an electronic message or record occurs when it enters into an information system designated by the receiver for the purpose of receiving that electronic record.\textsuperscript{50}

For example, under section 15 the time of receipt of an e-mail offer sent by a customer occurs when his e-mail order enters the information system through the e-mail address designated by the merchant. Conversely under section 15, the receipt of the e-mail acceptance from the merchant occurs when the acceptance enters the information system designated by the customer.

In both cases, actual notice of the contents of the e-mail is irrelevant for the purposes of time of receipt. If the e-mail was sent to an address other than the one designated, the deemed time of receipt is when the e-mail is retrieved.\textsuperscript{51}

Further, where the information system is not specified or designated, the receipt is deemed to occur when the electronic record enters the information system of the receiver.

It is also provided under the ETA that while section 15 is a default position, parties may agree on an alternate outcome regarding the determination of the time and place of electronic communication. It is suggested that businesses should review their specific needs to determine the time at which acceptance is deemed to have occurred. For example, merchants may wish to provide that acceptance occurs when the physical goods are despatched from the warehouse, or when the e-mail confirming acceptance of the order is sent by the merchant.\textsuperscript{52}

Acceptance by Conduct — Delivery of Digital Goods or Services and Physical Goods

The second and third manner in which the e-business may convey its acceptance is to deliver the product ordered. When an offer is made via an order to purchase goods, the act of despatching the order by the offeree will be held as an acceptance.\textsuperscript{53} For example, if the Internet customer buys software

\begin{footnotesize}
\textsuperscript{50}S.15(2)(a)(i)
\textsuperscript{51}S.15(2)(a)(ii)
\textsuperscript{52}Instead of receipt.
\textsuperscript{53}Port Huron Machinery Co. v. Wohlers, 207 Iowa 826, 221 NW 843 (1928); cf. UCC, ss2–206(1).
\end{footnotesize}
from an e-business who delivers them online, the act of delivery will be construed as acceptance.

In the sale of physical goods to an Internet customer, the Internet seller’s despatch of the goods in a conventional delivery can also constitute acceptance. There is, however, no notice of the acceptance made by the e-business to the Internet customer and the store runs the risk of having the customer withdraw the offer before they receive the goods.

Fortunately in common law jurisdictions, e-businesses can, with careful drafting of contractual terms, avoid the difficult issue of when an acceptance occurs. The requirement for acceptances to be communicated can be overcome by the parties’ mutual agreement that they expressly waive the requirement.55 This can be set out in the web pages of the e-business as a term of the agreement. However, this clause waiving the notification of acceptance may be void under civil law systems.

**Acceptance by Automated Online Transaction Process**

Can a fully automated system contract on behalf of its programmers or owners when contracting with individuals? In essence, can a computer programme be an ‘electronic agent’ that binds its owner as an agent to a principal? Electronic commerce systems and now provide highly automated solutions to merchants online. It is common that such systems can be programmed to run autonomously as well as automatically. However as mentioned at the beginning, there can only be an enforceable contract if there is the element of legal intent to contract. Do electronic commerce systems have the capacity to form the requisite legal intent? The case of *Thornton v. Shoe Lane Parking*56 is able to assist in determining the scope of that intent arising. In that case the court held that there was an enforceable contract the moment the customer fed money into the parking machine and was issued the car park ticket. The judges clarified that businesses are responsible for the actions taken by programmed computers even where there is no direct human intent in the act performed by programmed machines.

Further, section 13(2)(b) of the ETA provides that even if the contract was formed by way of an automated process where the computer is programmed to respond in a specified way, the party that programmed the automated response will be deemed to have sent the automated message.57 In addition,

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54This is by *File Transfer Protocol* – see HSK Tan above note 22 on the Internet facilities. There has yet to be a clear direction whether software and information data can be held as ‘goods’ under the various Sale of Goods regimes around the world.

55*Chitty on Contracts*, above n. 21, 53.

56[1971] 1 AllER 686 (C.A.).

57See also earlier section ‘Automated E-mail Replies’.
section 12 provides that any declaration of intent or statement made in an electronic message or record will not be denied its legal effect. Accordingly, any agreement or contract entered into even by way of an automated system will be enforceable by law. Thus if a merchant’s automated online transactions process sends out a confirmation code of the offer, that code can be construed as an enforceable acceptance.

However if the system sends out merely an acknowledgement of the offer or has in the communication the words “goods supplied subject to availability”, there would not be an enforceable contract.

Acceptance by Other Conduct

Most merchants will want to provide specific terms as to when a contract is made online. For example, the terms and conditions will provide that there is no contract until the merchant deliver a confirmation of acceptance to the customer (either by e-mail, telephone or post). Unfortunately, such terms sometimes contradict their online transaction process. In most transaction-enabled sites, payment can be made with credit card. Such sites automatically process payment with the credit card company and issuing bank once the customer sends his account information to the merchant. Some merchant transactions systems will process the payment with the credit card company and issuing bank without a confirmation of acceptance from the merchant to the customer. It is highly arguable that the merchant’s automated payment process is conduct consistent with a merchant’s acceptance of the customer’s offer. To avoid such a situation, the merchant’s online transaction system should be configured such that payment is only executed after the merchant confirms his acceptance of the offer.

C. Legal Requirements for Contracts

Writing Requirements

In 1990, the United Nations Commission on International Trade Law (UNCITRAL) identified four reasons why in general terms that contracts were commonly evidenced in writing. These were the expectation that written

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58A case reported by Oo Gin Lee in the Straits Times, 6 June 2001, Goodies for Unmet Orders where Courts’ (a merchant retailer) online store made an error in pricing of a laptop and several customers made purchases on that mistake. In some reported instances, the payment by credit cards had been processed but later reversed.
contracts are able to reduce the possibility of disputes; make parties aware of the consequences of their dealings, provide evidence upon which third parties might rely upon the agreement and to facilitate tax, accounting and regulatory purposes. With the proper safeguards, electronic contracts should be able to address these concerns as well.

At one end of the spectrum of legal requirements, most common day to day contracts are formed without any need for writing as parties come to an agreement orally. On the other end are those contracts required by law to be executed by deed, such as leasehold contracts for a period of over three years. In the residual category of written contracts, only a small number are required by law to be evidenced in writing. Some examples are contracts for the sale of real property or contracts of guarantee are required to be evidenced in writing.

What constitutes writing is generally governed by section 1 of the 
Interpretation Act Cap 1, which provides, “writing and expressions referring to writing include printing, lithography, typewriting, photography and other modes of representing or reproducing words or figures in visible form.”

However, these general requirements pertaining to writing were extended by the ETA. Section 7 provides that “Where a rule of law requires information to be written, in writing, to be presented in writing or provides for certain consequences if it is not, an electronic record satisfies that rule of law if the information contained therein is accessible so as to be useable for subsequent reference” (note the agreements and documents excluded from application under the ETA). Accordingly, as long as the electronic agreement is not excluded under the ETA and fulfils the condition that it is readily accessible or retrievable for reading.

Signature Requirements

Several types of documents and agreements require signatures as a matter of law. For example, the Registry of Companies Forms require the signatures of directors and shareholders. Insurance agreements also need to be signed. A signature to an agreement is important as it carries a dual function. Firstly, it is usually interpreted to show the signatory’s intention to be bound by the agreement. Secondly, a signature authenticates the signatory who signed the contract (and not an impostor) and so prevents any denials of his agreement.

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59See earlier section ‘Excluded Agreements and Documents under ETA’.
60Goodman v. J. Eban Ltd. (1954) 1 All ER 763 and Jenkins v. Gasford & Thring 164 ER 1208, it was held that a person could sign a document by applying a stamp of his signature himself or by a person authorised to do so on his behalf.
to the contents in the document. What constitutes a signature? A signature can be any mark made by the signatory. It does not have to be any specific form of letters or names. There has been case law sanctioning the use of mechanical forms of signature production. For example, in *Goodman v. Eban*[^1] the Court of Appeal held that an embossed rubber stamp with the name of a firm used on a document will be treated as a signature of the firm as the essential requirement of signature is the affixing in some way onto a document a name or ‘signature’ for the purposes of authenticating the document.

While it is common practice to use a hand written mark or a stamp to indicate a signature, the question is how does one sign an electronic or virtual document? Section 2 of the ETA defines “electronic signature” as 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.

Further, section 8 provides that:

1. where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law. (2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party.

Some may literally interpret this part of subsection (2) to allow even a digitally scanned image of a hand written signature or a signature by means of a stylus on a digitising tablet; personal digital assistant; or even the touch screen of a notebook computer by the signatory. However from the rest of the provision, it is clear that the intent of the provision is that there ought to be some procedure put in place for the purposes of determining or verifying the record. Such procedures could include alphanumeric passwords. But such signatures are insecure against abuse and have little or no protection against misuse.

### D. Incorporation of Terms of Electronic Contracts

As in contracting in real space, businesses online will endeavour to protect themselves with their own standard terms and conditions of contract. It is a

general principle of contract law that any terms or conditions will be binding only when the party relying on them has brought them to the attention of the other party before the agreement is concluded. In real space, standard terms and conditions are usually included either in the correspondence exchanged or in the back of invoices or delivery orders. Fortunately for merchants online, click-wrap or click through agreements have also been held to be enforceable.62

In the online environment, there are generally three types of standard terms and conditions.

1. Terms and conditions of use of the website material. Often websites will have terms of use, disclaimer clauses or privacy statements.
2. Standard Terms and Conditions relating to the contract of sale of the merchant’s products or services.
3. Terms relating to the licensing of product or services whose intellectual property belongs to the content owner or software house.

Merchants have devised various methods to incorporate their standard terms and conditions into their online business. It is common practice that merchant’s standard terms and conditions will be applicable to an agreement through either a reference to those terms in the negotiations63 or through a course of previous dealings where the other party will have had already notice of those terms.64

Also, many merchants merely provide a hypertext link to the webpage setting out the standard terms and conditions. This is the usual method used for disclaimer clauses and terms of use of the website. Often the link is found on every page of the website or on the HTML frame. Such terms and conditions are often accompanied with a notice that the continued use of the website will constitute the acceptance of the terms and conditions listed in the link. Whether the link and such a notice will be considered sufficient

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62Hotmail Corp v. Van$ Money Pie Inc., 1998 WL 388389 (N.D. Cal. 1998). Merchant are strongly advised to retain records of acceptance of terms by their customers as a means of protection against any claims that no agreement had been used.
63A hypothetical example, “TAKE NOTICE that any agreement concluded will be subject to the Company’s standard terms and conditions found at the following webpage – http://company.com/termsandconditions/”
64This is often the case where the merchant requires the customer to register himself at the website before a transaction is possible. During the registration process, customers are asked to agree with the standard terms by scrolling through the terms before clicking a button to indicate their acceptance to the terms. Though they may not be entering immediately into any contract the registration process is arguable ground to claim that the standard terms had been made known through previous course of dealing.
will depend on how effective the terms was brought to the attention of the visitor or offeree.

While this is a widespread practice, a recent decision in the US raises doubts about the reliance to such a means to establish the notice of the websites terms and conditions of use. In the case of *Specht v. Netscape Communications Corp*[^65] Judge Hallerstein made a simple judicial finding that may have profound implications for businesses online. Here Netscape had intended to rely on its standard license terms and conditions to force a class action against it to be decided by arbitration. These terms and conditions however were not read by the plaintiffs before or during the download of Netscape’s programme. Instead of requiring the users to read the terms and have them click on the ‘I agree’ button, it provided “please review and agree to the terms of the agreement”. However the way the software was configured, the software would still download even if the user did not agree to the terms. It was held that if a user can download software without clicking on any ‘I agree’ button or link that indicates his agreement, then he has not agreed to anything at all. Accordingly, there needs to be an active assent on the part of the user to the terms for it to binding.

Such an active assent can be made to establish the comprehensive terms and conditions – especially those for the purposes of online transactions terms – by way of a webpage that requires the user to scroll through the terms and requiring the customer to click on a button. The button would usually indicate something to the effect of “I understand and accept the above terms and conditions.”.

Usually there is another other button to the effect “I disagree with the terms and conditions and wish to exit.”, which allows the customer to have the opportunity to exit the system.[^66] Merchants usually use this type of process for every transaction completed by customers. Especially when the terms are altered regularly. The alternative is to require customers to go through this exercise when they register themselves as a user of the site thus removing the requirement to be notified of the terms repeatedly for each transaction instead a simple clause making reference to the terms will be used in the process.

The enforceability of a merchant’s online standard terms and conditions however is yet to be convincingly settled. Most commentators look to the string


[^66]: This alternative step for the customer is important as it prevents the customer from using the argument that the system did not permit the customer the freedom to decline or refuse to agree to the terms.
of shrink-wrap cases to determine the effectiveness of the standard terms and conditions. The phrase ‘shrink wrap contract’ came about through the string of cases that dealt with the enforceability of printed standard license terms and conditions found inside boxes or packages of computer software. The paradox of shrink-wrap licenses—which consequently affects its enforceability—is that the purchaser or licensee is able to read and determine the terms of the license only after he has purchased the software. In contract, all terms must be made known before the contract is formed otherwise such terms will not be part of the contract and thus unenforceable. In the US, the law has since refined this principle to allow the software manufacturer to provide for shrink-wrap terms to the effect that the purchaser will be deemed to have accepted the terms through his conduct of retaining the product and using it. Purchasers who disagree to those terms have a right to return the goods and obtain full repayment of the purchase price.67

Conclusion

The ETA has been lauded by many for bringing clarity to an area wrought with controversies. However on closer analysis of several of its provisions, issues are being now being raised on the efficacy of those rules. Further, the practices and methods of online contracting will continue to change as technology changes. Some with uncertainty as to its effectiveness as seen in the case of Specht v. Netscape Communications Corp. How the principles of common law electronic contracting and provisions of the ETA impact on each other will eventually be tested in the courts. Unfortunately even though the ETA has been around since 1998, there has yet to be any reported cases to test any of its provisions. The courts however are cognisant that the ETA is a hybrid of various laws from other jurisdictions. Any development in these countries will be closely observed as it would have an impact on the general development of electronic contracting law.

67 ProCD Inc v. Zeidengerg 86 F3rd 1447 (7th Cir 1996) where a shrink-wrap license was held enforceable notwithstanding that it was not visible on the package itself.
Legal recognition of electronic records

6. For the avoidance of doubt, it is hereby declared that information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Requirement for writing

7. Where a rule of law requires information to be written, in writing, to be presented in writing or provides for certain consequences if it is not, an electronic record satisfies that rule of law if the information contained therein is accessible so as to be usable for subsequent reference.

Electronic signatures

8. (1) Where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.

   (2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party.

Retention of electronic records

9. (1) Where a rule of law requires that certain documents, records or information be retained, that requirement is satisfied by retaining them in the form of electronic records if the following conditions are satisfied:

   (a) the information contained therein remains accessible so as to be usable for subsequent reference;

   (b) 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;

   (c) 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
(d) 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.

(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.

(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.

(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;
(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, ministry, organ of State or statutory corporation.

PART IV
ELECTRONIC CONTRACTS

Formation and validity

11. (1) For the avoidance of doubt, it is hereby declared that in the context of the formation of contracts, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of electronic records.

(2) Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

Effectiveness between parties

12. As between the originator and the addressee of an electronic record, a declaration of intent or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Attribution

13. (1) An electronic record is that of the originator if it was sent by the originator himself.

(2) As between the originator and the addressee, an electronic record is deemed to be that of the originator if it was sent—
(a) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
(b) by an information system programmed by or on behalf of the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic record as being that of the originator and to act on that assumption if—
   (a) in order to ascertain whether the electronic record was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
   (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic records as its own.

(4) Subsection (3) shall not apply—
   (a) from the time when the addressee has both received notice from the originator that the electronic record is not that of the originator, and had reasonable time to act accordingly;
   (b) in a case within subsection (3)(b), at any time when the addressee knew or ought to have known, had it exercised reasonable care or used any agreed procedure, that the electronic record was not that of the originator; or
   (c) if in all the circumstances of the case, it is unconscionable for the addressee to regard the electronic record as that of the originator or to act on that assumption.

(5) Where an electronic record is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic record received as being what the originator intended to send, and to act on that assumption.

(6) The addressee is not so entitled when the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic record as received.

(7) The addressee is entitled to regard each electronic record received as a separate electronic record and to act on that assumption, except to the extent that the addressee duplicates another electronic record and the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the electronic record was a duplicate.

(8) Nothing in this section shall affect the law of agency or the law on the formation of contracts.

Acknowledgment of receipt

14. (1) Subsections (2), (3) and (4) shall apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested or has agreed with the addressee that receipt of the electronic record be acknowledged.
(2) Where the originator has not agreed with the addressee that the acknowledgment be given in a particular form or by a particular method, an acknowledgment may be given by —
   (a) any communication by the addressee, automated or otherwise; or
   (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(3) Where the originator has stated that the electronic record is conditional on receipt of the acknowledgment, the electronic record is treated as though it had never been sent, until the acknowledgment is received.

(4) Where the originator has not stated that the electronic record is conditional on receipt of the acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed within a reasonable time, the originator —
   (a) may give notice to the addressee stating that no acknowledgment has been received and specifying a reasonable time by which the acknowledgment must be received; and
   (b) if the acknowledgment is not received within the time specified in paragraph (a), may, upon notice to the addressee, treat the electronic record as though it has never been sent, or exercise any other rights it may have.

(5) Where the originator receives the addressee’s acknowledgment of receipt, it is presumed, unless evidence to the contrary is adduced, that the related electronic record was received by the addressee, but that presumption does not imply that the content of the electronic record corresponds to the content of the record received.

(6) Where the received acknowledgment states that the related electronic record met technical requirements, either agreed upon or set forth in applicable standards, it is presumed, unless evidence to the contrary is adduced, that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the electronic record, this Part is not intended to deal with the legal consequences that may flow either from that electronic record or from the acknowledgment of its receipt.

**Time and place of despatch and receipt**

15. (1) Unless otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters an information system outside the control of the originator or the person who sent the electronic record on behalf of the originator.

(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic record is determined as follows:
   (a) if the addressee has designated an information system for the purpose of receiving electronic records, receipt occurs —
      (i) at the time when the electronic record enters the designated information system; or
(ii) if the electronic record is sent to an information system of the addressee that is not the designated information system, at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated an information system, receipt occurs when the electronic record enters an information system of the addressee.

(3) Subsection (2) shall apply notwithstanding that the place where the information system is located may be different from the place where the electronic record is deemed to be received under subsection (4).

(4) Unless otherwise agreed between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business.

(5) For the purposes of this section—

(a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;

(b) if the originator or the addressee does not have a place of business, reference is to be made to the usual place of residence; and

(c) “usual place of residence” in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

(6) This section shall not apply to such circumstances as the Minister may by regulations prescribe.