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Use of E-Signature in Singapore, Thailand and Japan

The laws in Singapore, Thailand and Japan have recognized the use of electronic signature (**e-signature**) for more than 2 decades but until recently, there has been slow uptake on the use of e-signature. The COVID-19 pandemic has prompted various discussions on the use and legal effect of e-signature and other related electronic tools such as digital signature (a form of e-signature created using a public key infrastructure) and electronic contract. E-signature is now one of the hot topics for legal practitioners, academics and law makers as the pandemic is pushing organizations to adopt and embrace digitalization in the new normal.

This article seeks to provide a general overview of the laws in Singapore, Thailand and Japan on the use of e-signature.

1. Does the law recognise e-signature?

The laws in Singapore, Japan and Thailand recognized the use of e-signature as **functionally equivalent to wet-ink signature** (and affixation of seal in Japan). Broadly speaking, this means that where a rule of law requires a signature, that requirement for a signature is satisfied by an e-signature, subject to certain requirements being satisfied. The main statute governing the use of e-signature in each country is set out below.

Singapore Law	Electronic Transaction Act enacted in 1998 (Singapore law)
Thai Law	Electronic Transaction Act, B.E. 2544 (2001) enacted in 2001 (Thai law)
Japanese Law	The Act on Electronic Signatures and Certification Business enacted in 2001 (Japanese law)

2. What is an e-signature?

The legal definition of “e-signature” in each of the countries is set out below. Generally, “e-signature” simply means any marking or symbol that is created in electronic form which indicates the signatory’s acknowledgement of the contents of the electronic document. Thus, an e-signature can be:

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- signature block contained in an email
- scanned copy of a handwritten signature
- a drawing of a signature made with a mouse, a touchscreen or stylus
- signature created by program such as DocuSign and AdobeSign

Singapore Law	There is no definition of “electronic signature” under the Singapore law.
Thai Law	“Electronic Signature” is defined as characters, alphabets, figures, sound, or any other symbol created in electronic form and affixed to electronic data to show a relationship between a person and the said electronic data, for the purpose of identifying the signatory relating to such electronic data. It is also proof that the said person accepts the statement contained in the said electronic data.
Japanese Law	"Electronic Signature" is defined as an e-signature affixed on electronic data which satisfies the 2 requirements. The requirements are explained in Section 3 below.

3. Legal requirements for proving the validity of e-signature

The formats of e-signature are boundless. The pertinent question is how a party can prove that such e-signature is valid if the other party subsequently argues that it is not. If a party challenges the validity of the e-contract due to the use of e-signature, the other party defending the use of e-signature will bear the burden of proving that the e-signature fulfilled certain legal requirements. These requirements are set out below.

Singapore Law	The requirements under section 8 of the Singapore law: <ol style="list-style-type: none"> (1) a method is used to identify the person and to indicate that person's intention in respect of the information contained in the electronic record; and (2) such method used must be either: - <ol style="list-style-type: none"> (a) as reliable as appropriate for the purpose for which the electronic record was generated or communicated, in light of all circumstances, including any relevant agreement; or (b) proven in fact to have fulfilled the functions described in (1) by itself or together with other evidence.
Thai Law	The requirements under Thai law are similar to section 8 of the Singapore law (but without provision (2)(b) above).

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	<p>Moreover, in relation to reliability, Thai law specifically sets out the factors to be taken into consideration:</p> <ul style="list-style-type: none"> (a) the security and strictness of the methods and equipment; (b) the nature, kind and size of the transaction, the number of occasions on which or the frequency at which transactions take place, trade customs or practice and the importance and the value of the transactions made; and (c) the strictness of the communication systems.
<p>Japanese Law</p>	<p>The 2 requirements under Article 2 of the Japanese law are:</p> <ul style="list-style-type: none"> (a) the e-signature is affixed on certain electronic data in order to express that the electronic data was made by the person who has affixed such e-signature; and (b) it can be verified that the contents of the electronic data have not been modified after such e-signature was affixed.

4. Shifting the burden of proving the validity of e-signature

As can be seen in section 3 above, if the use of e-signature is being challenged, the burden of establishing that a document has been validly “e-signed”, or that the e-signature is authentic, falls on the party who seeks to rely on the e-signature. This can be quite a daunting task.

Under the laws in Singapore, Thailand and Japan, such burden of proof will be shifted to the party who challenges the authenticity of the e-signature, if the e-signature fulfilled certain stricter requirements than those specified under section 3 above. In Singapore, this category of e-signature is commonly known as “secure e-signature” in Singapore, and in Thailand, this category of e-signature is known as “reliable e-signature”.

<p>Singapore Law</p>	<p>Pursuant to section 19(2) of the Singapore law, any portion of an electronic record that is signed with a secure e-signature will give rise to the legal presumption that (i) the e-signature is the signature of the person to whom it correlates, (ii) it was affixed by the person with the intention of signing or approving the electronic record, and (iii) the secure electronic record has not been altered since the time of the signature. Thus, the burden of proof is shifted to the other party to prove otherwise.</p> <p>Pursuant to section 18 of the Singapore law, secure e-signatures</p>
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	<p>refer to those which, through the application of a specified security procedure, or a commercially reasonable security procedure agreed by the parties involved, can be verified that the e-signature was, at the time it was made (a) unique to the person using it; (b) capable of identifying such person; (c) created in a manner or using a means under the sole control of the person using it; and (d) linked to the electronic record to which it relates in a manner such that if the record was changed the e-signature would be invalidated.</p> <p>One example of this secure e-signature is “digital signature.” Digital signature is considered to be a secure e-signature provided that it satisfies the requirements in paragraph 3, Third Schedule of the Singapore law. Essentially, digital signature is a form of e-signature created using a public key infrastructure and which is verified by a certificate issued by an accredited certification authority. Currently, the sole accredited certificate authority in Singapore is Netrust.</p>
<p>Thai Law</p>	<p>Pursuant to the ETDA Recommendation on ICT Standard for Electronic Transactions regarding Electronic Signature Guideline (“Electronic Signature Guideline”) issued by the Electronic Transactions Development Agency (“ETDA”), “reliable e-signatures” are legally presumed to be valid and the burden of proof is on the party who claims that such e-signature is invalid. However, this concept of burden of proof regarding “reliable e-signatures” is yet to be tested in Thai courts.</p> <p>The Electronic Signature Guideline defines “reliable e-signatures” as e-signatures with (a) at least Identity Assurance Level 2 (ie there is a verification of identification evidence (i.e. ID card or passport)) or appropriate and reliable identification method, and (b) Authenticator Assurance Level 2 (ie a multi-factor authentication and one of the factors is a cryptographic key).</p> <p>The requirements of "reliable e-signatures" under the Thai law are as follows:</p> <p>(1) the signature creation data are, within the context in which they are used, linked to the signatory and to no other person;</p>

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	<p>(2) the signature creation data were, at the time of signing, under the control of the signatory and of no other person;</p> <p>(3) any alteration to the e-signature, made after the time of signing, is detectable; and</p> <p>(4) where the purpose of the legal requirement for a signature is to provide assurance as to the completeness and integrity of the information any alteration made to that information after the time of signing is detectable.</p>
<p>Japanese Law</p>	<p>Article 228, Paragraph 4 of the Code of Civil Procedure provides that a document between private parties shall be presumed to be authentic if there is a signature or a seal by the party (or its agent) on such document. What this means is that if a party can prove that the signature is signed by person whom it correlates or a seal has been affixed by its owner, then the presumption is that the document is authentic.</p> <p>Such presumption of legal authenticity is applicable to e-documents which is affixed with e-signature. Article 3 of the Japanese law provides that Electronic data created by a particular private person shall be presumed to be duly executed by such person if the e-signature of such person is affixed by such person on such electromagnetic record” and that such e-signature can be performed [only] by the signatory through appropriate management of codes and properties necessary to [affix the e-signature] “. There is no guidance as to what constitute “appropriate management of codes and properties” and therefore whether such requirement is met will be determined at the discretion of the court.</p> <p>It is generally accepted that e-signatures created using e-signature service providers approved by the Government such as “iProve” and “CESIGN” would be able to meet such requirement. E-signatures created using non-approved e-signature providers such as DocuSign or Adobe would be able to enjoy the presumption under Article 3 of the Japanese law if it fulfils the above requirement.</p>

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5. Documents that can be signed electronically and those which are excluded matters

E-signatures can be widely used in any electronic documents which requires a signature including commercial contracts, employment agreements, board minutes and resolutions, letters, invoices. However, there are certain types of documents in which e-signature cannot be used. The table below lists down (non-exhaustively) certain transactions that should not be e-signed.

Singapore Law	<ul style="list-style-type: none"> - creation or execution of a will or a deed - negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts, transferable document or instruction that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money - Indenture, declaration of trust or power or attorney - contract for the sale and or disposition of immovable property - conveyance of immovable property or any interest in immovable property
Thai Law	<ul style="list-style-type: none"> - transactions relating to family and succession matters. - transactions which require registration with certain government authorities.
Japanese Law	<ul style="list-style-type: none"> - documents related to real property transfer and wills

Final note on the use of e-signature

Even though the use of e-signature is still trailing far behind the use of wet-ink signature (or seal in Japan), it will not be surprising if the use of e-signature will very soon surpass the use of wet ink signature as the pandemic accelerates global digitalization and e-commerce. It is important for organizations to understand the use of e-signature, its legal implications, and associated risk.

As the law in this area is still developing, it would be important to seek legal advice on the use of e-signature in each jurisdiction, and to adopt a suitable corporate policy and protocol in the use of e-signature in each of the countries.

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Editorial Team 編集責任者



Kana Manabe 真鍋 佳奈
Partner パートナー
Tel: +65-6593-9762 (Singapore)
kana.manabe@mhm-global.com



Chong Chia Chi チョン・チア・チー
MHM Singapore Counsel
MHM シンガポールカウンセラー
Tel: +65-6593-9759 (Singapore)
chiachi.chong@mhm-global.com



Nathee Silacharoen
ナティエ・シーラチャルアン
Chandler MHM Counsel
チャンドラーMHM カウンセラー
Tel: +66-2-009-5000 (Thai)
nathee.s@mhm-global.com

(Contacts)
Public Relations
mhm_info@mhm-global.com
+81-3-6212-8330
www.mhmjapan.com