

## **Evidence (Amendment) Bill**

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## **Bill No: 45/1995**

***Read the first time: 5th December 1995***

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## **Evidence (Amendment) Bill**

### **Bill No. 45/1995**

*Read the first time on 5th December 1995.*

An Act to amend the Evidence Act (Chapter 97 of the 1990 Revised Edition) and to make consequential amendment to the Computer Misuse Act (Chapter 50A of the 1994 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### **Short title and commencement**

1.—(1) This Act may be cited as the Evidence (Amendment) Act 1995 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) Section 3 shall apply to any judicial proceedings in or before any court which takes place on or after the commencement of this Act, and the court may make any order as it thinks fit to give effect to that section.

(3) Section 8 shall not apply to an act done before the commencement of this Act.

### **Amendment of section 3**

2. Section 3 of the Evidence Act is amended by inserting, immediately before the definition of “court”, the following definitions:

“ “computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include —

- (a) an automated typewriter or typesetter;
- (b) a portable hand held calculator;
- (c) a device similar to those referred to in paragraphs (a) and (b) which is non-programmable or which does not contain any data storage facility;
- (d) such other device as the Minister may by notification prescribe;

“computer output” or “output” means a statement or representation (whether in audio, visual, graphical, multi-media, printed, pictorial, written or any other form) —

- (a) produced by a computer; or
- (b) accurately translated from a statement or representation so produced;”.

### **Repeal and re-enactment of sections 35 and 36 and new section 36A**

3. Sections 35 and 36 of the Evidence Act are repealed and the following sections substituted therefor:

#### **“Evidence of computer output**

**35.—**(1) Unless otherwise provided in any other written law, where computer output is tendered in evidence for any purpose whatsoever, such output shall be admissible if it is relevant or otherwise admissible according to the other provisions of this Act or any other written law, and it is —

- (a) expressly agreed between the parties to the proceedings at any time that neither its authenticity nor the accuracy of its contents are disputed;
- (b) produced in an approved process; or
- (c) shown by the party tendering such output that —
  - (i) there is no reasonable ground for believing that the output is inaccurate because of improper use of the computer and that no reason exists to doubt or suspect the truth or reliability of the output; and
  - (ii) there is reasonable ground to believe that at all material times the computer was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the accuracy of the output was not affected by such circumstances.

(2) Notwithstanding subsection (1)(a), an agreement expressly made between the parties referred to in that subsection shall not render the computer output admissible in evidence —

- (a) in criminal proceedings on behalf of the prosecution if at the time the agreement was made, the accused person or any of the accused persons was not represented by an advocate and solicitor; or

- (b) in any proceedings, if the agreement was obtained by means of fraud, duress, mistake or misrepresentation.

(3) A certificate signed by a person holding a responsible position in relation to the operation or management of a certifying authority appointed under subsection (5) and purporting to identify the approved process, including that part of the process that is relevant to the proceedings, shall be sufficient evidence that the process is an approved process for the purposes of this section.

(4) Where the computer output is obtained from an approved process and duly certified as such by a person holding a responsible position in relation to the operation or management of the approved process, it shall be presumed that it accurately reproduces the contents of the original document unless the contrary is proved.

(5) Any reference to “approved process” in this section means a process that has been approved in accordance with the provisions of any regulations made by the Minister, by a person or an organisation appointed by the Minister to be a certifying authority under such regulations.

(6) With respect to subsection (1)(c), a certificate signed by a person holding a responsible position in relation to the operation or management of the relevant computer system and —

- (a) purporting to identify such output and describing the manner in which it was produced;
- (b) giving particulars of any device involved in the processing and storage of such output;
- (c) dealing with the matters mentioned in subsection (1)(c),

shall be sufficient evidence of the matters stated in the certificate.

(7) If the person referred to in subsection (6) who occupies a responsible position in relation to the operation or management of the computer did not have control or access over any relevant records and facts in relation to the production by the computer of the computer output, a supplementary certificate signed by another person who had such control or access and made in accordance with subsection (6)(a), (b) and (c) shall be sufficient evidence of the matters stated in the certificate.

(8) If any person referred to in subsection (6) or (7) refuses or is unable for any reason to certify any of the matters referred to in subsection (6) or (7), a certificate signed by another person who had obtained or been given control or access to the

relevant records and facts in relation to the production by the computer of the computer output and made in accordance with subsection (6)(a), (b) and (c) shall be sufficient evidence of the matters stated in the certificate.

(9) For the purposes of subsections (3), (4), (6), (7) and (8), it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(10) Any computer output tendered in evidence under this section and duly authenticated shall not be inadmissible as evidence of proof of the contents of the original document merely on the ground that —

- (a) certain parts or features of the original document, such as boxes, lines, shades, colours, patterns or graphics, do not appear in the output if such parts or features do not affect the accuracy of the relevant contents; or
- (b) it is secondary evidence.

(11) Any person who in a certificate tendered under subsection (3), (4), (6), (7) or (8) in a court makes a statement which he knows to be false or does not reasonably believe to be true shall be guilty of an offence and shall be liable on conviction to a fine or to imprisonment for a term not exceeding 2 years or to both.

### **Supplementary provisions to section 35**

**36.**—(1) Where a court is not satisfied that the computer output sought to be admitted in evidence under section 35 accurately reproduces the relevant contents of the original document, the court may, in its discretion, call for further evidence.

(2) Where further evidence is called for under subsection (1), such evidence may be produced by an affidavit made —

- (a) by a person occupying a responsible position in relation to the operation or management of the certifying authority appointed under section 35(5);
- (b) by any other person occupying a responsible position in relation to the operation of the computer at the relevant time;
- (c) by the person who had control or access over any relevant records and facts in relation to the production of the computer output;
- (d) by the person who had obtained or been given control or access over any relevant records and facts in relation to the production of the computer output; or