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**Panel on Information Technology and Broadcasting
Meeting on 7 November 2002**

**Information note on issues related to
the review of the Electronic Transactions Ordinance**

Background

The Electronic Transactions Ordinance (Cap. 553) (ETO) was enacted in January 2000 to provide a statutory framework for conducting electronic transactions in Hong Kong. In response to members' concerns raised at the Bills Committee, the Administration undertook to review the ETO 18 months after its enactment to ensure that Hong Kong has the most up-to-date legislative framework for the conduct of e-business.

2. After conducting an internal review within the Government covering all bureaux and departments, the Administration has formulated a set of preliminary proposals to update and improve the ETO for public consultation in March 2002. The consultation period ended in 30 April 2002.

Preliminary Proposals

3. Some of the Administration's preliminary proposals set out in the consultation paper include:

(a) ***Legal recognition of other forms of electronic signatures***

It is proposed that in addition to the use of digital signature, the use of personal identification number (PIN) should be accepted for satisfying the signature requirement in law if the level of security offered by it is commensurate with the risk of the service involved.

(b) ***Legal requirement of "delivery by post or in person"***

There are still express requirements under existing legislation that certain documents should be delivered to the party concerned either by post or in person. Instead of amending each piece of legislation separately, it is proposed to specify in a new schedule to the ETO those provisions under which the requirement of "delivery by post or in person" will automatically be construed as covering "delivery by electronic means" as well.

(c) ***Exemptions under the ETO***

As there is a genuine and practical need for certain matters or some specific statutory provisions to be excluded from the electronic process, several exclusion orders were made since the ETO was first enacted to exempt 202 statutory provisions from the application of ETO. A review by the Administration reveals that some provisions which are or will soon become no longer necessary can be removed from the exclusion list of ETO.

(d) ***Voluntary recognition scheme for certification authorities (CAs)***

It is proposed to split the assessment for voluntary recognition of CAs into two parts. The part relating to the trustworthiness of the certification service will be prepared by a qualified and independent person to be approved by the Director of Information Technology Services (the Director) and the other part not relating to the trustworthiness of the certification services will be dealt with through a declaration made by an authorized person of the CA concerned.

It is also proposed that the Director be authorized to ask the recognized CA to furnish an assessment report between annual assessments when there are or will be major changes in the operation of the CA that may affect its trustworthiness.

Issues of concern

4. The Administration sought members' views on the consultation paper on 11 March 2002. The major areas of concerns expressed by members were as follows:

- (a) Some members considered that some Government departments seemed to adopt a security level lower than digital certification. As such, they questioned the efficacy of Hong Kong Post's role as a CA in promoting the adoption of digital certification within Government departments. Members also questioned whether it was cost-effective or appropriate for departments to develop individual security infrastructure instead of using the certification system provided by the Hong Kong Post.
- (b) The interface of ETO with other legislation in which other forms of electronic signature were used. For example, the Inland Revenue (Amendment) (No. 2) Bill 2001 proposed the use of PIN for the purpose of satisfying the signature requirement under law in filing tax returns.
- (c) The absence of competition in the certification service market as at that time, only one CA in the market had launched service to compete with Hong Kong Post. Members urged the Administration to expedite the processing of applications to bring about a truly competitive certification service market.
- (d) The current utilization rate of electronic transactions as compared to the originally projected target.
- (e) Greater consistency in the use and interpretation of e-terminology such as "online" or "the Internet" in drafting legislation.

5. On the issue of the interface between ETO and other legislation, the Administration has maintained that ETO provided a generic framework for conducting electronic transactions. It does not preclude other ordinances in making specific provisions to facilitate electronic transactions. The proposed use of PIN in the Inland Revenue (Amendment) (No. 2) Bill would only provide a further option of filing tax returns.

6. In this connection, it should be noted that some deputations which attended the meeting of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill on 23 October 2002 had expressed reservation about the security of using PIN in filing tax returns. The Administration was also asked to provide further information on the experience of overseas jurisdictions where PIN was used for authentication of documents filed with the Government.

7. Concerning the utilization of electronic transactions, the Administration highlighted that the adoption of electronic transactions in the commercial and business sectors were encouraging. Although only a relatively small percentage of the general public had used online government services for electronic transactions, the Administration would continue to promote their wider use in the community.

8. As regards the use and interpretation of e-terminology in law drafting, the Department of Justice has undertaken to draw up internal guidelines to achieve consistency in the use of the terms "online" and "the Internet" in drafting legislation.

Latest position

9. The Administration will brief members on the results of the public consultation and the way forward at the next Panel meeting on 7 November 2002.

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