

**Follow-up on Matters Raised at the Fifth Meeting
of the Bills Committee on Electronic Transactions Bill
Held on 18 November 1999**

Introduction

This paper addresses the issues raised by Members at the fifth meeting of the Bills Committee on Electronic Transactions Bill held on 18 November 1999.

Clause 4

2. We are examining the drafting of similar provisions in other legislation and will submit our comments separately.

Clauses 20(1)(b) and 21(5)

3. We shall propose Committee Stage Amendments to the effect that the Director of Information Technology Services (DITS) will give reasons for refusing an application for recognition under Clauses 20(1)(b) and 21(5) of the Bill.

Clauses 22 and 23

4. We note Members' concern that consumers should have up-to-date knowledge about any changes to the status of a recognised certification authority as a result of DITS's decision to suspend or revoke the concerned certification authority's recognition. To facilitate this, we shall propose Committee Stage Amendments so that -

- (a) if the Director decides to revoke the recognition, he must inform the certification authority concerned of the decision by notice in writing and immediately give notice of the revocation to the public in the on-line certification authority disclosure record maintained by the Director for that certification authority;
- (b) if the certification authority concerned appeals against the revocation, the Director, upon receiving the notice of appeal, must immediately give notice of the appeal to the public in the on-line certification authority disclosure record maintained by the Director for that certification

authority;

- (c) where the revocation of a recognition has taken effect, the Director must immediately give notice of the revocation to the public in the on-line certification authority disclosure record maintained for that certification authority and as soon as practicable give the same notice in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong for at least 3 consecutive days;
- (d) if the Director serves a notice of suspension of recognition on a certification authority, the Director must immediately give notice of the suspension to the public in the on-line certification authority disclosure record maintained for that certification authority;
- (e) if the certification authority concerned appeals against the suspension, the Director, upon receiving the notice of appeal, must immediately give notice of the appeal to the public in the on-line certification authority disclosure record maintained for that certification authority;
- (f) where the suspension has taken effect, the Director must immediately give notice of the suspension to the public in the on-line certification authority disclosure record maintained for that certification authority and as soon as practicable give the same notice in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong for at least 3 consecutive days; and
- (g) if a suspended recognition is reinstated, the Director must immediately give notice of the reinstatement to the public in the on-line certification authority disclosure record maintained for that certification authority.

5. We further propose that Clauses 22(9) and 23(7) be deleted.

6. We shall also propose a Committee Stage Amendment to the effect that the Director shall maintain an on-line and publicly accessible certification authority disclosure record, which contains information relevant for the purposes of the Bill, for each recognised certification authority.

7. With the above proposals, we consider that consumers will have sufficient and timely notice about the revocation or suspension of recognition of certification authorities so that they can take an informed decision as to whether to obtain or continue to obtain the certification services provided by the concerned certification authorities. Having regard to the nature of the proposed recognition scheme as a voluntary one rather than a mandatory one and from the consumer protection viewpoint, we consider that the above proposals would serve the same purpose of the issue of a restriction notice under the Securities and Futures Commission Ordinance (Cap. 24).

Clause 25(3) and 25(5)

8. We shall propose Committee Stage Amendments to Clauses 25(3) and 25(5) of the Bill to make them clearer and to the effect that -

- (a) the revocation of a recognition does not affect the valid use of the concerned certificates before the revocation takes effect; and
- (b) the suspension of a recognition does not affect the valid use of the concerned certificates before the suspension takes effect and after the reinstatement of the suspended recognition.

Clause 26(1)

9. We shall propose a Committee Stage Amendment to Clause 26(1) to the effect that a certification authority recognised under Clause 20 may apply for renewal of the recognition and an application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the validity of the recognition.

Clause 27(1)

10. In respect of Members' view that Clause 27(1) should be re-drafted to tackle situations where the notice of the Director is unable to be served on the concerned certification authority, we shall propose a Committee Stage Amendment to Part VII of the Bill to the effect that if a notice or other document required to be given to a person is sent by post or registered post, it is taken to have been served at the time at which the notice or other document would be delivered in the ordinary course of post if the notice or other document is sent to the last known address of that person.

Clause 41

11. Examples of functions performed by a person under or for the purposes of the Bill referred to in Clause 41(1) are -

- (a) the Director and his staff examining the applications from certification authorities for recognition; or
- (b) the staff of recognised certification authorities examining the information of applicants for the purpose of issuing certificates to them.

12. Similar provisions as Clause 41(2) in respect of exceptions where the secrecy provision is dis-applied are found in the Securities and Futures Commission Ordinance (Cap. 24), Insurance Companies Ordinance (Cap. 41) or Banking Ordinance (Cap. 155), etc. The relevant provisions are set out in the Annex.

13. We shall propose a Committee Stage Amendment to tighten Clause 41(2)(a) to the effect that the provision of secrecy does not apply to disclosure which is necessary for performing or assisting in the performance of a function under or for the purposes of the Electronic Transactions Ordinance. This imposes a tighter requirement by introducing the test of necessity.

14. We have already undertaken to propose a Committee Stage Amendment to tighten Clause 41(2)(b) to the effect that the provision of secrecy is dis-applied in situations where information is disclosed for the purpose of any criminal proceedings in Hong Kong or for the purpose of complying with a requirement made under a rule of law with a view to instituting such proceedings.