

立法會

Legislative Council

LC Paper No. CB(1)1618/99-00

(These minutes have been seen
by the Administration)

Ref : CB1/BC/19/98/2

Bills Committee on Electronic Transactions Bill

**Minutes of the second meeting
held on Thursday, 4 November 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon SIN Chung-kai (Chairman)
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP

Members absent : Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon FUNG Chi-kin

**Public officers
attending** : Information Technology and Broadcasting Bureau
Mrs Jessie TING
Deputy Secretary for Information Technology and
Broadcasting

Mr Alan SIU
Principal Assistant Secretary for Information Technology and
Broadcasting

Department of Justice

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Information Technology Services Department

Mr Daniel LAM
Assistant Director

Mr H C PANG
Senior Systems Manager

Efficiency Unit

Mr W F YUK
Assistant Director (Special Duties)

Hongkong Post

Mr Michael CHUNG
Senior Manager, Electronic Services

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Mr Matthew LOO
Senior Assistant Secretary (1)7

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I. Matters arising from the first meeting

Comparison of the approach adopted under the Electronic Transactions Bill (the Bill) and in overseas legislation in respect of the provision on legal recognition of digital signature/electronic signature

(LC Paper No. CB(1)230/99-00(01))

Deputy Secretary for Information Technology and Broadcasting (DSITB) briefed members on the paper provided by the Administration. She highlighted that different jurisdictions had followed different models in enacting their legislation on electronic transactions. Some had focused on digital signature and some had made reference to electronic signature. No specific reference was made to either digital

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signature or electronic signature in the United Nations Commission on International Trade Law — Model Law on Electronic Commerce. In order to provide a statutory framework to address concerns over the security and certainty in electronic transactions, the Administration considered that legal recognition should for the time being be given only to digital signature which was currently the only technically mature technology. The Bills Committee noted the Administration's views.

Types of documents and acts excluded from the application of clauses 5, 6, 7, 8 and 16 of the Bill

(LC Paper No. CB(1)230/99-00(02))

2. DSITB briefed members on the paper provided by the Administration. She advised that while it was the Administration's policy objective to promote the wider adoption of electronic transactions, the Administration appreciated that legal recognition of electronic records and digital signatures was a fairly recent development both locally and globally. The Administration therefore considered that a step-by-step approach in this regard would be more conducive to engendering public confidence in electronic transactions. The Administration proposed that for the time being certain types of transactions would preferably be conducted through conventional means and that the Bill should not go as far as to require acceptance of electronic documents and digital signature in all types of transactions before the community at large was ready for such a change. In identifying items to be included in the exclusion list in Schedule 1 of the Bill, the Administration had taken into account the following factors:

- (a) the solemnity of the transactions involved;
- (b) the need for secondary authentication, involving swearing, attestation or the transaction "being witnessed";
- (c) protection of Government revenue; and
- (d) practical reasons or reasons associated with current technical capabilities of the systems.

3. Mr Jasper TSANG sought the Administration's clarification on the reasons for the differences in the types of documents excluded from the application of the Bill, and those excluded from the Electronic Transactions Act of Singapore and the Uniform Electronic Commerce Act of Canada. In response, DSITB stressed that the exclusion was only a temporary measure. Different countries might adopt different approaches to suit their own circumstances. The Administration would closely monitor technological developments and the changes in community perception, and to review the exclusion list as and when necessary. She also pointed out that the Secretary for Information Technology and Broadcasting (SITB) might by order under clause 45 to amend Schedule 1. The order was subsidiary legislation which was subject to the

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negative vetting of the Legislative Council. Mr TSANG accepted this arrangement.

4. Mr Eric LI pointed out that the Hong Kong Society of Accountants (HKSA) was concerned about the readiness of Government departments, in particular the Inland Revenue Department, to cope with changes arising from electronic transactions. DSITB appreciated Mr LI's views and advised that the Administration had already assessed the impact of the Bill on Government departments. As pointed out earlier, protection of Government revenue was one of the factors considered by the Administration in identifying items to be included in the exclusion list.

Consultation on the draft Code of Practice for recognized certification authorities
(LC Paper No. CB(1)230/99-00(03))

5. Principal Assistant Secretary for Information Technology and Broadcasting (PASITB) advised that under clause 39, the Director of Information Technology Services (DITS) might issue a code of practice specifying standards and procedures for carrying out the functions of recognized certification authorities (CAs). The Administration had published the draft code for public consultation on 25 October 1999. The Administration would review the code in the light of the comments received during the consultation period up to 15 November 1999.

6. Mr Eric LI advised that HKSA had expressed grave concern about the use of the terms "audit" and "auditors" in clause 37 and section 3.13 of the draft code of practice respectively, as the public would not be able to differentiate between an audit conducted under clause 37 and the statutory financial audits performed by Certified Public Accountants. Mr LI considered the terms misleading and urged the Administration to replace them with other terms which could more accurately reflect the nature of the audit under clause 37. PASITB clarified that the term "audit" used under clause 37 and the code of practice only referred to the assessment of the operations of recognized CAs to ascertain whether they had complied with the provisions of the Bill and the code of practice. The Administration would discuss the matter further with HKSA for improvement of the drafting.

The Administration's responses to submissions from deputations
(LC Paper Nos. CB(1)230/99-00(04), 230/9-00(05), 230/99-00(06), 230/99-00(09), 230/99-00(11))

7. DSITB briefed members on the Administration's responses to the submissions from Horvath & Giles, Solicitors and Notaries, Business Software Alliance (BSA), Hong Kong General Chamber of Commerce, Hong Kong Bar Association (HKBA) and Law Society of Hong Kong. She highlighted the following points:

- (a) Digital signature was currently the only technically mature technology that provided security service of a quality that satisfied the need for user authentication, ensuring the integrity and confidentiality of data and

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providing safeguard against repudiation of transactions. Giving legal recognition to other forms of electronic signature at this stage would cause uncertainty and operational problems, and impede the adoption of electronic transactions;

- (b) Under the proposed voluntary recognition scheme, CAs which intended to provide certification services in Hong Kong were free to decide whether to apply for recognition as recognized CAs. However, clause 43 provided that a person who made a false claim that a person or an organization was a recognized CA committed an offence. As regards the mandatory licensing scheme for CAs proposed by some deputations, the Administration considered it unduly restrictive and difficult to operate;
- (c) The Administration did not agree that DITS had been given wide discretionary powers in the determination of recognition criteria for recognized CAs. The main factors that DITS had to take into account in granting recognition was clearly set out in clause 20(3) and (4). Moreover, under clause 27, the decision of DITS in granting recognition was subject to appeal;
- (d) Apart from Part VII of the Bill on "Recognition of certification authorities and certificates by Director", Hongkong Post as a recognized CA had to comply with the other parts of the Bill in the same way as other recognized CAs; and
- (e) It was necessary for SITB to specify the manner and format of electronic records which were acceptable to Government systems.

8. DSITB also advised that the Administration had not accepted HKBA's suggestion to replace "Universal Standard Time" in clause 18 of the Bill by "Coordinated Universal Time", as the former was referred to and used in section 67(2) of the Interpretation and General Clauses Ordinance (Cap. 1) while the latter had not been used in the laws of Hong Kong. Assistant Legal Adviser 3 (ALA3) advised that "Coordinated Universal Time" was used in the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448) gazetted in July 1999. ALA3 considered the meaning of the two terms substantially the same and therefore had no objection to the adoption of "Universal Standard Time" in the Bill.

Technical demonstration by the Administration on digital signature

9. With the aid of audio-visual equipment, Assistant Director (Special Duties), Efficiency Unit (AD(SD)/EU) presented a technical demonstration on digital signature.

(Post-meeting note : The presentation material for the technical demonstration

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was circulated to members vide LC Paper No. CB(1)293/99-00 on 4 November 1999.)

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Date of meeting with deputations

10. The Chairman advised that BSA, Consumer Council and Hong Kong Computer Society had indicated that they would like to give oral presentations to the Bills Committee. The Bills Committee agreed to meet the deputations at its meeting to be held on 12 November 1999.

II. Clause-by-clause examination of the Bill

11. Due to time constraints, the Bills Committee agreed to continue the clause-by-clause examination of the Bill at the next meeting to be held on 8 November 1999.

III. Any other business

12. There being no other business, the meeting ended at 10:25 am.

Legislative Council Secretariat

14 April 2000