

立法會
Legislative Council

LC Paper No. CB(1)1947/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB1/BC/19/98/2

**Bills Committee on
Electronic Transactions Bill**

**Minutes of the third meeting
held on Monday, 8 November 1999 at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon SIN Chung-kai (Chairman)
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon FUNG Chi-kin

Members absent : Hon MA Fung-kwok
Hon Jasper TSANG Yok-sing, JP

Public officers attending : **Information Technology and Broadcasting Bureau**

Mrs Jessie TING
Deputy Secretary for Information Technology and
Broadcasting

Mr Alan SIU
Principal Assistant Secretary

Department of Justice

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Information Technology Services Department

Mr Daniel LAM
Chief Systems Manager

Mr H C PANG
Senior Systems Manager

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. Discussion on the Administration's response to three submissions**
- (LC Paper No. CB(1) 297/99-00(01)— The Administration's response to the submission from Mr John TSO
- LC Paper No. CB(1) 297/99-00(02) — The Administration's response to the submission from the Hong Kong Society of Accountants
- LC Paper No. CB(1) 297/99-00(03) — Letter dated 11 October 1999 from the Hong Kong Computer Society to the Administration
- LC Paper No. CB(1) 297/99-00(04) — The Administration's response to the letter dated 11 October 1999 from the Hong Kong Computer Society)

At the Chairman's invitation, Deputy Secretary for Information Technology

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and Broadcasting (DSITB) briefed members on the Administration's responses to the submissions from the Hong Kong Society of Accountants (HKSA), Hong Kong Computer Society (HKCS) and Mr John TSO.

2. Mr Eric LI pointed out that the Administration had not fully addressed the concern of HKSA. On the definition of "trustworthy system" in clause 2 of the Bill, for example, HKSA was concerned what criteria would be used to judge whether the requirements of reasonableness stated in items (a), (b) and (c) of the definition were satisfied, and what would be regarded as "generally accepted security procedures" referred to in item (d) of the definition. In response, DSITB advised that it was quite common to refer to the test of "reasonableness" in legislation. What was reasonable was a matter of fact, to be decided having regard to the circumstances of the case. Should there be any dispute over this point, the issue would ultimately be settled by the court. As regards "generally accepted security procedures", they were procedures which adhered to generally accepted security principles and standards in the industry. Given that industry security principles and standards might change over time in step of technological developments, it would not be appropriate for the Bill to delve into specifics. Assistant Director, Information Technology Services Department added that international standards were in place for the industry, and that reference could be made to these standards when necessary.

3. Mr Eric LI did not consider it appropriate to refer to international standards as they might not be suitable for application to Hong Kong. To avoid ambiguity, the industry should establish a set of principles and standards. As a start, Mr LI suggested that the Information Technology Services Department (ITSD) should draw up some guidelines in consultation with the industry. DSITB undertook to consider these views.

II. Clause-by-clause examination of the Bill

(LC Paper No. CB(1) 286/99-00(01)— Examples of exemptions to be made by Order under Clause 11 of the Electronic Transactions Bill)

4. The Bills Committee continued clause-by-clause examination of the Bill from Clause 7.

Clause 7 — Presentation or retention of information in its original form

5. The Chairman shared HKSA's concern about how it could be established that there existed a "reliable assurance" as to the integrity of the information from the time when it was first generated in its final form as an electronic record (clause 7(1)(a)), and that the information had remained complete and unaltered (clause 7(2)(a)). The Chairman and Mr Eric LI suggested that ITSD should draw up some guidelines for the industry. DSITB agreed to consider their suggestion.

Clause 8 — Retention of information in electronic records

6. In response to Mr David CHU's enquiry, Senior Assistant Law Draftsman clarified that "document or record" in clause 8(1)(a) referred to "electronic document or record". The Administration would propose a Committee Stage amendment (CSA) to improve the drafting of this clause.

Clause 9 — Admissibility of electronic records

Clause 10 — Construction of this Part subject to Part IV

7. Members had no comments on clauses 9 and 10.

Clause 11 — Secretary may make orders excluding application of section 5, 6, 7 or 8

Clause 12 — Electronic record to comply with specified requirements to satisfy sections 5, 6, 7 and 8

8. DSITB briefed members on the Administration's paper on the "Examples of exemptions to be made by Order under Clause 11 of the Electronic Transactions Bill" (LC Paper No. CB(1)286/99-00(01)).

9. In response to the Chairman's enquiry, DSITB advised that an order made by the Secretary for Information Technology and Broadcasting (SITB) under clause 11(1) was subsidiary legislation subject to negative vetting of the Legislative Council, but a notice under clause 11(2) was not. She also advised that under clause 12, if SITB had specified any requirement under clause 11(2) in relation to any rule of law, the information given, presented or retained or the signature executed for the purpose of the rule of law did not satisfy that rule of law unless it complied with the specified requirements.

10. Mr Eric LI considered that consultation should be conducted with the industry on the "manner and format" of an electronic record to be specified in the notice published by SITB under clause 11(2)(a). DSITB pointed out that the purpose of specifying the "manner and format" was to ensure that when electronic records were submitted to the Government, they could be received and accepted by the Government's systems. DSITB considered that these were technical matters which should be left to the Administration. She also pointed out that if members of the public were unable to comply with the specified requirements, they might submit the relevant information to the Government in written form as in the present.

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Clause 13 & Schedule 2 — Rules of court or procedure only to apply where relevant authority provides for application

Clause 14 — Sections 5, 6, 7, and 8 not to affect specific provisions as to electronic records in other Ordinances

Clause 15 — Sections 5, 6, 7, and 8 not to have effect if their operation affects other statutory requirements

11. Members had no comments on clauses 13 to 15 and Schedule 2.

Clause 16 — Formation and validity of electronic contracts

12. DSITB advised that to address the concern of some legal bodies including the Hong Kong Bar Association, a CSA would be proposed to clause 16 to protect the common law principle that the offeror might specify the means of communicating acceptance of an offer in contract formation. The amendment was to provide flexibility for parties for entering into contract with the use of electronic records by allowing the offeror to specify, when making the offer, that the offer could not be accepted by means of electronic records.

13. DSITB also advised that another CSA would be proposed to clause 16 to provide that where an electronic record was wholly or partly used in the formation of a contract, that contract should not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

14. Assistant Legal Adviser 3 (ALA3) pointed out that in the absence of any specific requirement under the Bill, when and where an electronic contract was formed would be decided by the law of contract applicable to Hong Kong.

Clause 17 — Attribution of electronic record

15. Members had no comments on clause 17.

Clause 18 — Sending and receiving electronic records

16. Mr Eric LI sought clarification on the formulation "comes to the attention of" used in clause 18(2)(a)(ii) and (2)(b) in the determination of time of receipt of an electronic record. DSITB advised that clause 18(2) would only apply to a situation where the originator and the addressee had not agreed on the arrangements for sending and receiving electronic records. Under clause 18(2), the time of receipt of an electronic record occurred at the time when the electronic record "comes to the attention of" the addressee. Principal Assistant Secretary for Information Technology and Broadcasting added that the formulation "comes to the attention of" was adopted from the Electronic Transactions Bill of Australia.

17. In response to the Chairman's enquiry, ALA3 advised that the formulation

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"comes to the knowledge of" instead of "comes to the attention of" was more commonly used in the laws of Hong Kong. She also pointed out that the formulation "at the time when the data message is retrieved by the addressee" was used in the United Nations Commission on International Trade Law (UNCITRAL) — Model Law on Electronic Commerce.

18. To address members' concern about the time of receipt of an electronic record, DSITB undertook to consider which of the three formulations mentioned in paragraphs 16 and 17 above was more appropriate for clause 18.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)343/99-00(07) on 12 November 1999.)

19. Responding to the Chairman, ALA3 advised that clause 18(4) to (6) was to address a situation where the originator and the addressee of an electronic record were in different countries/time zones. DSITB pointed out the need for the provisions of the three subclauses as there were more and more cross-border electronic transactions.

III. Any other business

Arrangements for the next meeting (the fourth meeting)

20. The Chairman advised that the Bills Committee would meet deputations at the next meeting scheduled for 12 November 1999. The Business Software Alliance, Consumer Council, HKCS and HKSA would give oral presentation to the Bills Committee at the meeting.

Date of the fifth meeting

21. Members agreed that the fifth meeting of the Bills Committee be held on Thursday, 18 November 1999 at 8:30 am.

22. There being no other business, the meeting ended at 12:50 pm.

Legislative Council Secretariat

22 June 2000