

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2037/99-00  
(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 fourth meeting  
held on Friday, 12 November 1999 at 8:30 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 Jasper TSANG Yok-sing, JP  
Hon Howard YOUNG, JP  
Hon FUNG Chi-kin

**Member absent** : Hon MA Fung-kwok

**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**

Miss Leonora IP  
Government Counsel

**Information Technology Services Department**

Mr Stephen MAK  
Assistant Director (Infrastructure Services)

Mr H C PANG  
Senior Systems Manager

**Hongkong Post**

Mr Michael CHUNG  
Senior Manager, Electronic Services

**Attendance by invitation** : **Business Software Alliance**

Mrs Rosana WONG  
Senior Attorney

**Hong Kong Computer Society**

Dr Louis MA  
Vice President (Membership)

Mrs Edith MOK  
Member of Advisory Panel

**Hong Kong Institution of Engineers**

Dr C K LEUNG  
Committee member, IT Division

**Hong Kong Society of Accountants**

Mr Alvin T W WONG  
Council Member

Mr Michael K H CHAN  
Council Member

Mr Gregory LO  
Member of Information Technology Committee

Mr Peter TISMAN  
Deputy Director (Professional Practices)

**Consumer Council**

Mrs CHAN WONG Shui  
Chief Executive

Mr Ron CAMERON  
Head, Trade Practices Division

**Law Society of Hong Kong**

Mr Marcus BOURGET  
Member of Management and Technology Committee

**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. Meeting with representatives of six organizations**

The Chairman welcomed the representatives of the Business Software Alliance, Hong Kong Computer Society, Hong Kong Institution of Engineers, Hong Kong Society of Accountants, Consumer Council and Law Society of Hong Kong to the meeting. He also referred members to the submissions from the six organizations and the Administration's responses to the submissions.

Presentation by organizations

*Business Software Alliance (BSA)*  
*(LC Paper Nos. CB(1)189/99-00(01) and CB(1)230/99-00(05))*

2. Mrs Rosana WONG, Senior Attorney of BSA, highlighted BSA's comments on the Administration's response to its first submission, as follows:

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- (a) Legal certainty was of fundamental importance to the development of electronic commerce. If legal recognition was only given to digital signature, it would create uncertainty as to whether other forms of electronic signature would also be recognized;
- (b) If other forms of electronic signature would not be recognized, it would create barriers to cross-border electronic commerce; and
- (c) If legal recognition would only be given to certificates issued by recognized certification authorities (CAs), a de facto mandatory licensing regime would be created.

3. Mrs Rosana WONG also advised that BSA was preparing its second submission and would forward it to the Bills Committee shortly.

*Hong Kong Computer Society (HKCS)*  
(LC Paper Nos. CB(1)313/99-00(03) and CB(1)297/99-00(04))

4. Dr Louis MA, Vice President (Membership) of HKCS, pointed out that as a whole, HKCS was satisfied with the Administration's response to its submission but was of the view that the clarifications made by the Administration should be incorporated into the Bill, for example, those relating to the role of the Director of Information Technology Services (DITS). Mrs Edith MOK, Member of Advisory Panel of HKCS, added that while HKCS had no objection to the adoption of the Public Key Infrastructure, it considered that the Administration should keep track of the development of technology and introduce appropriate changes when necessary.

*Hong Kong Institution of Engineers, IT Division (HKIE)*  
(LC Paper Nos. CB(1)313/99-00(04) and CB(1)343/99-00(01))

5. Dr C K LEUNG, Committee member, IT Division of HKIE, pointed out that:

- (a) HKIE noted that the Administration had just issued the draft Code of Practice for recognized CAs for public consultation. HKIE was of the view that in addition to the Code of Practice, the Information Technology Services Department (ITSD) should also draw up a set of objective and measurable criteria for recognition;
- (b) HKIE was concerned that the obligations of a CA upon termination of its services were not covered by the Bill;
- (c) HKIE was pleased to note that the Administration welcomed the development of encryption technology, but did not share the Administration's view that the use of encryption technology should be determined by the market; and

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- (d) HKIE considered that whether a subscriber was allowed to generate his own private key should be specified in the Code of Practice.

*Hong Kong Society of Accountants (HKSA)*  
(LC Paper Nos. CB(1)261/99-00(02) and CB(1)297/99-00(02))

6. Mr Alvin WONG, Council Member of HKSA, and Mr Peter TISMAN, Deputy Director (Professional Practices) of HKSA, highlighted HKSA's comments on the Administration's response to its submission, as follows:

- (a) The terms "audit" used in clause 37 and "auditor" in the Code of Practice were misleading as they were not related to the statutory financial audits performed by Certified Public Accountants;
- (b) The provisions in clause 19(3)(b) were too vague. More details on the nature of the report required to be furnished by an applicant to become a recognized CA and the qualifications of the person to give such a report should be specified;
- (c) The definition of "trustworthy system" was very important and should be refined to reflect its meaning more clearly;
- (d) HKSA noted the Administration's response that any dispute over whether the reliability assurance required under clause 7 existed would ultimately be settled by the court. HKSA was concerned that this might result in uncertainty until a substantial body of case law was built up;
- (e) The Administration should consult the industry before publishing the notice under clause 11(2), particularly because such a notice was not subsidiary legislation; and
- (f) Clause 41(2)(a) was very broad and vague. HKSA was not entirely convinced that there was a reasonable balance between protecting the privacy of individuals and fulfilling the legitimate objectives of the legislation in respect of this subclause.

7. Mr Peter TISMAN also advised that HKSA would forward its second submission to the Bills Committee shortly.

*Consumer Council (CC)*  
(LC Paper No. CB(1)343/99-00(02))

8. Mrs CHAN WONG Shui, Chief Executive of CC, highlighted the views of CC, as follows:

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- (a) Issues relating to consumer safeguards for electronic commerce should be addressed in due course. In the short term, self-regulatory schemes should be considered by the industry to ensure that their businesses complied with appropriate guidelines and to enable consumers to recognize reputable traders;
- (b) Consideration might be given to expand the role of DITS to oversee the competition in the new electronic commerce market;
- (c) As applications for recognition as recognized CAs were to be considered and approved by DITS, the liability of CAs for matters such as negligence should also be subject to a determination by DITS rather than by the court on a matter of law. This would provide a more affordable means of seeking redress for consumers; and
- (d) A provision might be added to the Bill to provide for the application of Hong Kong laws, where there was no specific mention in the provisions of an electronic transaction.

*Law Society of Hong Kong (LSHK)*  
*(LC Paper No. CB(1)343/99-00(03))*

9. Mr Marcus BOURGET, Member of Management and Technology Committee of LSHK, complemented the LSHK's submission, as follows:

- (a) As the aim of the Bill was to promote electronic commerce in Hong Kong, all forms of electronic signature, not only digital signature, should be afforded the appropriate legal recognition;
- (b) The LSHK proposed to adopt a "two-tier" approach. Firstly, all or most electronic authentication mechanisms and electronic records should be accepted on a technologically neutral basis and be granted a set of basic legal rights. However, such signatures would not be entitled to any presumptions on the signor's identity or intent, i.e. the signature would have to be proved in the normal manner. At the next level, a "secure electronic signature" was required to meet a set of legislative requirements for giving the relevant electronic record presumptions of integrity and of the signor's identity and intent; and
- (c) In view of items (a) and (b) above, clause 6 should be redrafted to make it in line with the spirit of the Bill as a whole.

Discussions

10. The Chairman asked whether the "two-tier" approach suggested by LSHK was adopted in other jurisdictions. Mr Marcus BOURGET advised that the approach was adopted in Singapore.

11. Deputy Secretary for Information Technology and Broadcasting (DSITB) undertook to provide the Bills Committee with written responses to the views expressed by the six organizations at the meeting.

12. The Chairman thanked the representatives of the six organizations for attending the meeting.

**II. Discussion on the Administration's response to three submissions**

13. The Bills Committee noted the following submissions and the Administration's responses:

	<u>LC Paper No.</u>
<u>Hong Kong Bar Association</u>	
- Letter dated 2 September 1999 from the Department of Justice to the Hong Kong Bar Association	CB(1)313/99-00(01)
- Letter dated 10 September 1999 from the Hong Kong Bar Association to the Department of Justice	CB(1)313/99-00(02)
- The Administration's response to the letter dated 10 September 1999 from the Hong Kong Bar Association	CB(1)343/99-00(04)
<u>Cable &amp; Wireless HKT (C&amp;WHKT)</u>	
- Submission	CB(1)313/99-00(05)
- Administration's response	CB(1)343/99-00(05)
<u>Mr Damien WONG</u>	
- Submission	CB(1)313/99-00(06)
- Administration's response	CB(1)343/99-00(06)

14. At the Chairman's invitation, DSITB briefed members on the Administration's responses mentioned above.

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15. Referring to the Administration's response to C&WHKT's submission regarding disclosure of private keys, the Chairman was concerned that the provision in clause 41(2)(b) might impose a new obligation to disclose information for law enforcement purposes. DSITB and Principal Assistant Secretary for Information Technology and Broadcasting advised that under clause 41(2)(b), the provision on obligation of secrecy would be dis-applied in situations where information was disclosed for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to instituting such proceedings. The subclause would not create a new obligation to disclose information where such obligation did not exist under other prevailing ordinances. At the suggestion of members, DSITB undertook to consider redrafting the subclause to clearly reflect the legislative intent.

*(Post-meeting note : The Administration agreed to move a Committee Stage amendment (CSA) to clause 41(2)(b). Its response was circulated to members vide LC Paper No. CB(1)382/99-00(01) on 17 November 1999.)*

16. Referring to the Administration's response to Mr Damien WONG's submission, Mr Jasper TSANG was concerned whether duplicating a private key of another person would constitute a criminal act and whether this type of cases was covered by existing legislation so that prosecution might be taken against the offenders. DSITB undertook to provide a written reply to address the issue.

*(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)382/99-00(01) on 17 November 1999.)*

**III. Clause-by-clause examination of the Bill**

(LC Paper No. CB(1)343/99-00(07) — Time of receipt of electronic records by an information system not designated by the addressee for receiving electronic records)

17. The Bills Committee continued clause-by-clause examination of the Bill from Clause 18.

*Clause 18 — Sending and receiving electronic records*

18. DSITB advised that having regard to members' views expressed at the last meeting on clause 18(2)(a)(ii), the Administration had analyzed the provisions in other jurisdictions concerning the time of receipt of electronic records by an information system not designated by the addressee for receiving electronic records. She then briefed members on the Administration's paper (LC Paper No. CB(1)343/99-00(07)).

19. Members supported the Administration's proposal to replace "comes to the attention of" by "comes to the knowledge of" in clause 18(2)(a)(ii) and 18(2)(b).



*Clause 19 — Certification authority may apply to Director for recognition*

20. The Chairman sought clarification on the circumstances under which the waiving provision in clause 19(4) in respect of the requirements for application for recognition as recognized CAs might be invoked. DSITB advised that the waiving provision might be invoked only for the purpose of facilitating the recognition in Hong Kong of CAs with a status in a place outside Hong Kong comparable to that of a recognized CA in Hong Kong. The Chairman supported this legislative intent but considered that the subclause should be refined to reflect that the waiving provision would apply to cross-border cases only. DSITB undertook to consider making the appropriate amendments.

*(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)382/99-00(01) on 17 November 1999.)*

*Clause 20 — Director may on application recognize certification authorities*

21. Members had no comments on clause 20.

*Clause 21 — Director may recognize certificates*

22. Members were concerned that as recognized CAs might issue recognized and unrecognized certificates, consumers might not be able to differentiate between the two. DSITB advised that in recognizing certificates under clause 21, DITS should take into account whether the certificates were issued in accordance with the certification practice statement (clause 21(4)(a)). Moreover, if a CA failed to operate in accordance with the certification practice statement, DITS might revoke or suspend the recognition (clause 24). Should there be any dispute, the issue might be settled by the court through civil proceedings.

23. In view of the time constraints, members agreed to discuss clause 21 further at the next meeting.

**IV. Any other business**

Date of the fifth meeting

24. The Chairman reminded members that the next meeting (fifth meeting) of the Bills Committee would be held on 18 November 1999 at 8:30 am.

Date of the sixth meeting

25. Members agreed that the sixth meeting of the Bills Committee be scheduled

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for 22 November 1999 at 2:30 pm.

26. There being no other business, the meeting ended at 10:35am.

Legislative Council Secretariat  
12 September 2000