

立法會
Legislative Council

LC Paper No. CB(1) 2038/99-00
(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 fifth meeting
held on Thursday, 18 November 1999 at 8:30 am
in the 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 Ronald ARCULLI, JP
Hon CHAN Kwok-keung

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

Department of Justice

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Information Technology Services Department

Mr Stephen MAK
Assistant Director (Infrastructure Services)

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 fourth meeting

Administration's response to issues raised by members at the fourth meeting
(LC Paper No. CB(1)382/99-00(01) — Paper provided by the Administration to address the issues raised by members at the fourth meeting)

At the Chairman's invitation, Deputy Secretary for Information Technology and Broadcasting (DSITB) briefed members on the Administration's response to the issues raised by members at the fourth meeting.

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2. Mr Ronald ARCULLI noted the Administration's proposed Committee Stage amendment (CSA) to clause 41(2)(b) but still considered that the provision on obligation of secrecy not sufficiently clear. At Mr ARCULLI's request, DSITB and Senior Assistant Law Draftsman (SALD) undertook to:

- (a) provide examples to illustrate the types of functions performed by a person under or for the purposes of the Bill referred to in clause 41(1);
- (b) provide provisions of other legislation which were similar to those of clause 41(2); and
- (c) consider tightening the provisions of clause 41(2), with reference to the relevant provisions of the Securities and Futures Commission Ordinance (Cap. 24) and Inland Revenue Ordinance (Cap. 112).

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

Administration's response to the submission from Consumer Council
(LC Paper No. CB(1)382/99-00(02))

3. DSITB briefed members on the Administration's response to the submission from Consumer Council. Members raised no question on the response.

II. Further submissions/other paper received since the fourth meeting

4. Members noted that the following organizations/person had provided further submissions/paper to the Bills Committee:

	<u>LC Paper No.</u>
<u>Further submissions</u>	
- Business Software Alliance	CB(1)382/99-00(03)
- Hong Kong Institution of Engineers (IT Division)	CB(1)382/99-00(04)
- Hong Kong Society of Accountants	CB(1)382/99-00(05)
- Law Society of Hong Kong	CB(1)382/99-00(06)
- Cable & Wireless HKT	CB(1)382/99-00(07)
- Mr Damien WONG	CB(1)382/99-00(08)
<u>Other paper</u>	
- "Data Privacy and Digital Certificates" prepared by the Office of the Privacy Commissioner for Personal Data	CB(1)382/99-00(09)

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5. Responding to the Chairman, DSITB undertook to provide the Administration's responses to the above submissions/paper for members' reference.

(Post-meeting note : The Administration's responses were circulated to members vide LC Paper Nos. CB(1)409/99-00(01) to (06).)

III. Clause-by-clause examination of the Bill

Clause-by-clause examination of the Bill

6. The Bills Committee continued clause-by-clause examination of the Bill from clause 21.

Clause 21 — Director may recognize certificates

7. In response to the Chairman's enquiry, DSITB advised that the Director of Information Technology Services (DITS) was not required to give reasons for refusing an application for recognition under clauses 20(1)(b) or 21(5). DITS was only required to give reasons for suspending a recognition under clause 23(1). In practice, the Information Technology Services Department (ITSD) would communicate with the CA concerned if its application for recognition was refused. The Chairman and Mr Ronald ARCULLI considered that in order to be fair to the applicants, DITS should give reasons for all his decisions on refusing applications for recognition. In response, DSITB undertook to consider amending clauses 20(1)(b) and 21(5) to this effect.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

Clause 22 — Revocation of recognition

Clause 23 — Director may suspend recognition

8. The Chairman noted that under clause 22(7), if a CA appealed against a revocation of recognition, the revocation did not take effect until the expiry of seven days from the date on which the Secretary for Information Technology and Broadcasting (SITB) confirmed the revocation on appeal. He was concerned that the provision would cause uncertainty as the CA concerned was allowed to continue its operation during the seven-day period. Mr Ronald ARCULLI considered that from the consumer protection viewpoint, provisions might be added to the Bill to restrict the business of the CA concerned during the seven-day period. He suggested the Administration to make reference to the provisions on "restriction notice" under the Securities and Futures Commission Ordinance (Cap. 24). DSITB undertook to consider Mr ARCULLI's suggestion.

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(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

9. Mr Ronald ARCULLI was also concerned about consumer protection during the period of suspension of recognition of a CA or certificates issued by a recognized CA, in particular, whether the public would be informed of DITS's decision of suspension so that they could make an informed decision as to whether to obtain or continue to obtain the certification services provided by the CA concerned. In response, DSITB and Senior Systems Manager of ITSD advised that it would be stipulated in the Code of Practice that the CA concerned was obliged to inform its subscribers about DITS's decision of suspension. Moreover, under clause 23(6), where the suspension of a recognition had taken effect, DITS was required to give notice of the suspension as soon as practicable in one English language daily newspaper and one Chinese language daily newspaper for at least three consecutive days and in the CA disclosure record maintained for that CA. This arrangement was similar to that relating to DITS's decision of revocation of recognition under clause 22(8).

10. Mr Ronald ARCULLI was not convinced of the Administration's response and considered that the public should have sufficient and timely notice about DITS's decision of suspension or revocation of recognition of a CA. He suggested the Administration to consider revising clauses 22 and 23 to the effect that DITS must immediately inform the CA concerned and the public of his decision. Mr Eric LI shared his view. DSITB undertook to consider Mr ARCULLI's suggestion.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

11. The Chairman, Mr Ronald ARCULLI and Mr David CHU queried the need for clauses 22(9) and 23(7). DSITB advised that the purpose of these subclauses was to avoid any doubt about the validity of DITS's decision of suspension or revocation if DITS failed to comply with clauses 22(8) and 23(6). However, members did not see any reasons why DITS would fail to comply with the requirements. At members' suggestion, DSITB undertook to consider deleting clauses 22(9) and 23(7).

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

12. The Chairman noted that there was no provision in the Bill to require DITS to maintain the CA disclosure record referred to in clauses 22(8)(b) and 23(6)(b). In response, DSITB advised that a CA disclosure record was defined in clause 2 as an on-line and publicly accessible record maintained by DITS in respect of that CA. At the suggestion of the Chairman, DSITB undertook to consider adding a provision in the Bill to require DITS to keep a central registry of CAs.

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(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

Clause 24 — Matters Director may take into account in revoking or suspending a recognition

13. Mr Eric LI pointed out the Hong Kong Society of Accountants (HKSA)'s concern about the use of the term "audit" in clauses 24 and 37. DSITB advised that the Administration was considering the comments of HKSA and would provide a response shortly. Members agreed to discuss this issue further when the Bills Committee examined clause 37.

Clause 25 — Effect of revocation, suspension of recognition or expiry of validity of recognized certificate

14. Mr Ronald ARCULLI was concerned about the clarity of clause 25(3) and (5). SALD undertook to consider redrafting these subclauses.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

15. Responding to the Chairman, DSITB advised that under clause 23, DITS might suspend a recognition for a period of not exceeding 14 days. If the period of suspension expired during the validity of the recognition and the recognition was not revoked, the recognition would be taken to be reinstated.

Clause 26 — Director may renew recognition of certification authority

16. At the suggestion of Mr Ronald ARCULLI and Mr David CHU, SALD undertook to redraft clause 26(1) to make it easier to understand.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

Clause 27 — Certification authority may appeal to Secretary against decision of Director

17. DSITB advised that in view of members' concerns, the Administration would propose a CSA to clause 27 to provide that SITB must inform the appellant in writing of his decision on the appeal with reasons.

18. Referring to clause 27(1) which provided that a CA aggrieved by a decision of DITS might appeal to SITB within seven days of the date on which the notice of the decision was served on the CA, Mr Ronald ARCULLI was concerned how to tackle a situation where the notice was unable to be served on the CA concerned. SALD

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undertook to consider redrafting clause 27(1) to address this concern.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(01) on 25 November 1999.)

Other issue (clause 4)

19. Mr Eric LI noted that under clause 4, subject to the exceptions in the Bill, the Bill applied in relation to any rule of law applicable to an individual, public body or public authority and to any electronic transaction to which any such person was a party. He pointed out that under common law, a party might take the benefits created under an Ordinance without a specific application clause similar to clause 4. He invited the Administration to re-examine the drafting of clause 4 with reference to the relevant provisions in other legislation. Other members supported Mr LI's views. DSITB and SALD undertook to review the drafting of clause 4.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)465/99-00(01).)

IV. Any other business

Date of the sixth meeting

20. The Chairman reminded members that the next meeting (sixth meeting) of the Bills Committee would be held on 22 November 1999 at 2:30 pm.

Date of the seventh meeting

21. Members agreed that the seventh meeting of the Bills Committee be scheduled for 29 November 1999 at 2:30 pm.

(Post-meeting note : As directed by the Chairman after the meeting, the seventh meeting was rescheduled to be held on 26 November 1999 at 8:30 am.)

22. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat

12 September 2000