

立法會
Legislative Council

LC Paper No. CB(1)1617/99-00
(These minutes have been seen
by the Administration)

Ref : CB1/BC/19/98/2

**Bills Committee on
Electronic Transactions Bill**

**Minutes of the first meeting
held on Friday, 22 October 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 Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon CHAN Kwok-keung
Hon Jasper TSANG Yok-sing, JP

Members absent : Hon Eric LI Ka-cheung, 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 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

I. Election of Chairman

Mr David CHU, the member who had the highest precedence in the Legislative Council among the Members on the membership list of the Bills Committee, presided over the election of the Chairman.

Action

2. Mr David CHU nominated Mr SIN Chung-kai and Mr MA Fung-kwok seconded the nomination. Mr SIN Chung-kai was elected Chairman of the Bills Committee. He then took the chair.
3. The Bills Committee agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

Briefing by the Administration

4. At the Chairman's invitation, Deputy Secretary for Information Technology and Broadcasting (DSITB) briefed members on the background and objectives of the Electronic Transactions Bill (the Bill). She pointed out that electronic commerce had been widely recognized as the engine of future economic growth. However, Hong Kong had yet to tap the full potentials of electronic commerce to enhance its overall competitiveness. In order to provide the necessary legislative back-up for the conduct of electronic transactions in Hong Kong and to address public concerns about the security and certainty of electronic transactions, the Administration proposed to introduce the Bill to:

- (a) give electronic records and digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts; and
- (b) establish a framework to promote and facilitate the operation of certification authorities (CAs) so as to ensure trust and security in electronic transactions.

5. DSITB also highlighted that the proposed provisions were introduced along the line of the United Nations Commission on International Trade Law (UNCITRAL) - Model Law on Electronic Commerce. In line with the minimalist regulatory approach adopted by the Administration and to encourage private sector initiatives, the Administration did not propose to introduce a mandatory licensing scheme under the proposed legislation. To protect consumer interests and to enhance users' confidence in electronic transactions, however, a voluntary system of recognition was proposed whereby CAs were free to apply for recognition from the Director of Information Technology Services (DITS).

6. DSITB advised that the Administration had consulted the Panel on Information Technology and Broadcasting (ITB Panel), the Hong Kong Bar Association (HKBA) and the Law Society of Hong Kong (HKLS) on the principles of the Bill. The ITB Panel and HKBA supported the principles. HKLS had taken note of the principles and had raised some technical points for clarification.

Action

7. DSITB then briefed members on the outline of the Administration's proposed Committee Stage amendments (CSAs) (LC Paper No. CB(1) 140/99-00(02)).

Discussion with the Administration

Technological neutrality

8. Members noted that some organizations were concerned that the Bill only gave legal recognition to digital signature and that it was biased towards the public key infrastructure developed by the Government. In response, DSITB and Assistant Director (Special Duties), Efficiency Unit (AD(SD)/EU) advised that 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 providing safeguard against repudiation of electronic transactions. The Administration considered that to give legal recognition to other forms of electronic signature at this stage might cause uncertainty and operational problems. In view of the technical constraints, legal recognition should for the time being be given only to digital signature. The Administration would review the legislation regularly to take account of technological developments and make amendments where appropriate.

9. Responding to members' enquiries on relevant legislative provisions in overseas countries, DSITB advised that no specific reference was made to either digital signature or electronic signature in the UNCITRAL Model Law and different jurisdictions had followed different models in enacting their legislation on electronic transactions. Whilst Australia followed the UNCITRAL Model Law, Germany, Malaysia and a number of states in USA gave legal recognition to digital signature. At the Chairman's request, DSITB undertook to provide a comparison of the approach adopted under the Bill with those of the relevant legislation in overseas countries such as Australia, Germany, USA, Denmark, Malaysia and Singapore, in particular on the provisions on legal recognition of electronic signature and digital signature.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)230/99-00(01).)

Power of the Secretary for Information Technology and Broadcasting

10. The Chairman noted the Hong Kong General Chamber of Commerce (HKGCC)'s comment that the sweeping powers given to the Secretary for Information Technology and Broadcasting (SITB) to specify the manner and format of electronic records for the purposes of any rule of law was too excessive. In response, DSITB advised that the arrangement was essential as it was not practical to assume that Government's systems could deal with all types of technology or software. This arrangement would provide clear guidelines for parties which had to submit

Action

information to the Government electronically under various rules of law. This would also enhance certainty and would help parties concerned to minimize the cost of compliance as resources would not be spent on wrong format and procedure which were unacceptable to the Government systems.

Authentication costs

11. Members noted HKGCC's comment that the proposed provisions in the Bill might result in high authentication costs. DSITB advised that it was up to the individuals to decide the security level of digital certificate which should be used for the generation of digital signature for a particular transaction and thus the cost involved.

Clause-by-clause examination of the Bill

12. At the Chairman's suggestion, the Bills Committee agreed to examine the Bill clause-by-clause.

Clause 1 — Short title and commencement

13. Members had no comments on clause 1.

Clause 2 — Interpretation

14. Mr David CHU considered the definition of "digital signature" too restrictive and was concerned that the provisions of the Bill might fall behind with technological developments. In response, DSITB advised that "digital signature" in the Bill referred to a type of electronic signature generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function. The Administration would review the legislation regularly to take account of technological developments and make amendments where appropriate.

15. DSTIB also drew members' attention to the definition of "code of practice". She advised that under section 39 of the Bill, DITS would issue a code of practice specifying standards and procedures for carrying out the functions of recognized CAs. The draft code of practice would be issued to the relevant industries for consultation. At the Chairman's request, the Administration would provide the draft code of practice for members' reference.

(Post-meeting note: The first and second drafts of the code of practice were circulated to members vide LC Paper No. CB(1)230/99-00(03) and CB(1)559/99-00(07) respectively.)

Clause 3 and Schedule 1 — Matters to which sections 5, 6, 7, 8 and 16 are not applicable

16. DSITB advised that the Administration would propose a CSA to simplify the drafting of clause 3. Members had no comments on the proposed CSA.

17. Mr Jasper TSANG noted that the types of documents set out in Schedule 1 of the Bill were excluded from the application of clauses 5, 6, 7, 8 and 16 of the Bill. He was of the view that this provision contradicted the Administration's policy objective to promote the wider adoption of electronic transactions. The Chairman shared this view. DSITB explained that as legal recognition of electronic records and digital signatures was a fairly recent development both locally and globally, the Administration considered that for the time being certain types of transactions would preferably be conducted through conventional means because of their solemnity, significance, complexity or other factors. The Bill should not go as far as to require acceptance of electronic documents and digital signatures in all types of transactions before the community at large was ready for such a change. DSITB admitted that there were no scientific ways to determine what types of documents were to be excluded but the Administration would closely monitor technological developments and the changes in community perception, and would review the list in Schedule 1 of the Bill as and when necessary. At the Chairman's request, DSITB undertook to provide the criteria used by the Administration for determining what types of documents were to be excluded. At Mr Jasper TSANG's request, DSITB undertook to provide a comparison with relevant legislation in overseas countries.

Admin

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)230/99-00(02).)

18. On the types of documents to be excluded, DSITB advised that the Administration had accepted the views of Assistant Legal Adviser 3 that a document effecting a floating charge on immovable property referred to in section 2A of the Land Registration Ordinance (Cap. 128) should be excluded. Moreover, having regard to the view of the Estate Agents Authority, the Administration had agreed that "an estate agency agreement entered into between an estate agent and its clients" should not be excluded. The Administration would propose CSAs accordingly. Responding to the Chairman, DSITB advised that under clause 45, SITB might by order amend Schedule 1. The order was subsidiary legislation which was subject to the negative vetting of the Legislative Council.

Clause 4 — Rules of law and electronic transactions to which Ordinance applies

19. Members had no comments on this clause.

Clause 5 — Requirement for writing

20. The Chairman pointed out that as electronic records could be easily altered, they might not be admitted as evidence in courts. Principal Assistant Secretary for

Action

Information Technology and Broadcasting advised that the Evidence Ordinance (Cap. 8) provided for the admission of a statement contained in a document produced by a computer as prima facie evidence in court proceedings.

Clause 6 — Digital signatures

21. Members were concerned about the procedure in handling an electronic record which required more than one digital signature. The Administration undertook to arrange a technical demonstration at the next meeting.

Legislative timetable

22. To keep pace with the development of electronic commerce, DSITB emphasized the need to put the legal framework as contained in the Bill in place as soon as possible. Countries such as Singapore, Malaysia, Germany and the United States (USA) had already given legal recognition to electronic commerce. The Administration had planned to enact the Bill before the end of 1999 so that Hongkong Post could start providing public certification services on a non-exclusive basis by the end of 1999. The Chairman pointed out that based on the Administration's proposed legislative timetable, the Bills Committee would have to submit its report to the House Committee on 3 December 1999 for resumption of the Second Reading debate on the Bill at the Council meeting on 15 December 1999, the last Council meeting in 1999.

23. Mr Jasper TSANG expressed reservation about the proposed timetable as the Bills Committee might not have sufficient time to scrutinize the Bill and to deliberate on the views of various organizations. The Chairman noted Mr TSANG's concern and considered that the Bills Committee might proceed in accordance with the proposed timetable and review the situation at a later stage.

Invitation of public submissions

24. The Bills Committee decided to invite public submissions on the Bill. In this connection, the Chairman advised that HKGCC, HKLS, Business Software Alliance (BSA), and Horvath & Giles, Solicitors and Notaries had provided the Bills Committee with their submissions on the Bill. The Clerk had already forwarded the submissions to the Administration for comments.

(Post-meeting note:

- (a) An advertisement was placed on the South China Morning Post, the Ming Pao, and the website of the Legislative Council on 25 October 1999 to invite public submissions on the Bill;
- (b) Letters were issued to HKGCC, HKBA, HKLS, BSA, and Horvath & Giles, Solicitors and Notaries on 23 October 1999 inviting them to

Action

give further views on the Bill; and

- (c) As directed by the Chairman, letters were issued to the Consumer Council, Hong Kong Computer Society, Hong Kong Institution of Engineers (IT Division), and Hong Kong Information Technology Federation on 23 October 1999 inviting them to give views on the Bill.)

Date of second to fifth meetings

25. The Bills Committee also decided to schedule its second to fifth meetings as follows:

<u>Date</u>	<u>Time</u>
2 November 1999	10:45 am - 12:45 pm
4 November 1999	8:30 am - 10:30 am
8 November 1999	10:45 am - 12:45 pm
12 November 1999	8:30 am - 10:30 am

(Post-meeting note: As directed by the Chairman, the meeting scheduled for 2 November 1999 was subsequently cancelled so that Members might attend the Administration's presentation on Disney Park held on the same day.)

III. Any other business

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

Legislative Council Secretariat

31 January 2000