

立法會
Legislative Council

LC Paper No. CB(1)2039/99-00
(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 sixth meeting
held on Monday, 22 November 1999 at 2:30 pm
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 MA Fung-kwok
Hon Jasper TSANG Yok-sing, JP

Members absent : Hon CHAN Kwok-keung
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. Discussion on the Administration's responses to further submissions/other paper received since the fourth meeting

At the Chairman's invitation, Deputy Secretary for Information Technology and Broadcasting (DSITB) briefed members on the Administration's responses to the following submissions/other paper received since the fourth meeting:

LC Paper No.Business Software Alliance

- Further Submission CB(1)382/99-00(03)
- Administration's response CB(1)409/99-00(01)

Hong Kong Institution of Engineers (IT Division)

- Further Submission CB(1)382/99-00(04)
- Administration's response CB(1)409/99-00(02)

Hong Kong Society of Accountants

- Further Submission CB(1)382/99-00(05)
- Administration's response CB(1)409/99-00(03)

Law Society of Hong Kong

- Further Submission CB(1)382/99-00(06)
- Administration's response CB(1)409/99-00(04)

Cable & Wireless HKT

- Further Submission CB(1)382/99-00(07)
- Administration's response CB(1)409/99-00(05)

Mr Damien WONG

- Further Submission CB(1)382/99-00(08)
- Administration's response CB(1)409/99-00(06)

Other paper

- "Data Privacy and Digital Certificates" prepared by the Office of the Privacy Commissioner for Personal Data CB(1)382/99-00(09)
- Administration's response CB(1)409/99-00(07)

Public/private key generation

2. Referring to the Administration's response to the further submission from the Hong Kong Institution of Engineers (IT Division), the Chairman asked whether the Hongkong Post would accept a subscriber's submission of his own key pairs. Assistant Director (Special Duties), Efficiency Unit advised that in general, a subscriber might generate his own key pairs or request the Hongkong Post to generate the key pairs for him, but the details should be left to the two parties to decide.

3. The Chairman suggested the Administration to stipulate in the Code of Practice for recognized certification authorities (CAs) that a CA should not reject a subscriber's submission of his own key pairs. DSITB did not consider it appropriate

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to do so, as whether a CA would accept or reject a subscriber's submission was a commercial decision to be taken by the CA concerned.

Recognition criteria for CAs

4. Referring to the Administration's response to the submission from the Hong Kong Society of Accountants (HKSA), Mr Eric LI noted that the Administration had proposed a Committee Stage amendment (CSA) to clause 19(3)(b)(i) to the effect that an applicant must furnish to the Director of Information Technology Services (DITS) a report which assessed the capability of the applicant to comply with the provisions of the Electronic Transaction Bill (the Bill) applicable to a recognized CA and the Code of Practice. He considered the term "capability" too broad and suggested that further elaboration on the term be made in the Bill so as to facilitate an applicant to assess his capability to comply with the relevant provisions. In response, DSITB advised that the term should be construed in accordance with its ordinary meaning. In other words, the report to be furnished to DITS should contain an assessment as to whether the applicant had the necessary ability to meet the various applicable requirements under the Bill and the Code of Practice. In this connection, DSITB undertook to provide a list showing the provisions of the Bill and the Code of Practice which were applicable to a recognized CA. She also advised that in determining whether an applicant was suitable for recognition, DITS was required to take into account several factors under clause 20(3), for example, the financial status of the applicant under clause 20(3)(a). Assistant Director (Infrastructure Services) of Information Technology Services Department added that detailed guidelines on the recognition criteria for CAs might be set out in the Code of Practice.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(03) on 25 November 1999.)

5. Mr Eric LI was of the view that the recognition criteria for CAs should be stipulated in the Bill instead of the Code of Practice. Mr Ronald ARCULLI expressed concern about the legal status of the Code of Practice and considered it more appropriate to stipulate the recognition criteria in the form of subsidiary legislation which would be subject to vetting by the Legislative Council. He also suggested the Administration to make reference to the practice notes issued by the Inland Revenue Department.

6. In response, DSITB advised that in view of the rapid development of information technology, it was not flexible to stipulate the recognition criteria in the Bill. Nevertheless, she undertook to consider members' views and provide a written response.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

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7. At Mr Eric LI's suggestion, DSITB undertook to consider extending the scope of clause 20(3) to cover the security arrangements adopted by an applicant.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

Appeal mechanism

8. Referring to the Administration's response to the further submission from Cable and Wireless HKT on the appeal mechanism proposed under the Bill, the Chairman asked whether it was common in existing legislation that an appeal against the decision of an executive body of the Government over a certain matter was made to the Policy Secretary responsible for that matter. DSITB advised that in general, there were three different appeal mechanisms against the decisions of executive bodies of the Government:

- (a) appeal made to the Policy Secretary (e.g. under section 28(7)(a) of the Ferry Services Ordinance (Cap. 104));
- (b) appeal made to the Chief Executive in Council (e.g. under sections 5B and 5E of the Societies Ordinance (Cap. 151)); and
- (c) appeal made to an appeal board (e.g. under section 12(1) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)).

DSITB pointed out that the appeal mechanism proposed under the Bill was the same as that mentioned in item (a) above.

Obligation of secrecy

9. DSITB advised that having regard to HKSA's comments, the Administration would propose a CSA to tighten clause 41(2)(a) to the effect that the provision on obligation of secrecy was disappplied to disclosure which was necessary for performing or assisting in the performance of a function under or for the purposes of the Bill. Members supported this proposed CSA.

Review of the Electronic Transactions Ordinance

10. The Chairman and Mr Eric LI were concerned whether the Administration had any timetable for reviewing the Electronic Transactions Ordinance (the Ordinance) after its enactment. The Chairman suggested the Administration to conduct the review one year after the enactment of the Ordinance and indicate this commitment upon resumption of the Second Reading debate on the Bill. DSITB undertook to consider these suggestions.

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(Post-meeting note : At the seventh meeting of the Bills Committee on 26 November 1999, the Administration undertook to conduct a review of the Ordinance 18 months after its enactment. The Secretary for Information Technology and Broadcasting indicated this commitment upon the resumption of the Second Reading debate on the Bill on 5 January 2000.)

Consultation on Code of Practice

11. At the Chairman's request, DSITB undertook to provide a paper to brief members on the comments received in the public consultation exercise of the draft Code of Practice.

(Post-meeting note : The Administration's response (LC Paper No. CB(1)443/99-00(05) was circulated to members vide LC Paper No. CB(1)464/99-00 on 26 November 1999.)

Taxation implications

12. Mr Eric LI was concerned about the potential taxation implications of electronic commerce. DSITB undertook to convey his views to the Commissioner of Inland Revenue for consideration.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

II. Discussion on the Administration's proposed amendment to Post Office Trading Fund Resolution

(LC Paper No. CB(1)409/99-00(08))

13. At the Chairman's invitation, DSITB briefed members on the proposed amendment to the Post Office Trading Fund Resolution. She advised that the purpose of the amendment was to enable Hongkong Post to provide certification services. The Administration's intention was, subject to the passage of the Bill, that the amendment resolution would be moved at the same Council meeting when the Second Reading debate on the Bill resumed.

(Post-meeting note : The Administration subsequently advised that the amendment resolution would be moved after the enactment of the Ordinance.)

14. Mr Eric LI asked whether the Administration had any plan on the privatization of Hongkong Post and if so, whether Hongkong Post would still be exempted from Part VII of the Bill on "Recognition of Certification Authorities and Certificates by Director" upon privatization. DSITB undertook to provide a written response.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

III. Clause-by-clause examination of the Bill

Clause-by-clause examination

15. The Bills Committee continued clause-by-clause examination of the Bill from clause 28.

Clause 28 — The Postmaster General as recognized certification authority

16. The Chairman noted that under clause 28, "The Postmaster General", instead of "The Hongkong Post", was regarded as a recognized CA for the purposes of the Bill. In response to the Chairman's enquiry, Senior Assistant Law Draftsman advised that the drafting of clause 28 was in line with that of the Post Office Ordinance (Cap. 98).

Clause 29 — Postmaster General may perform functions and provide services of certification authority

17. The Chairman noted that under clause 29(2), the Postmaster General might determine and charge fees for providing services of a CA. He queried why the fees were not subject to the approval of the Legislative Council. In response, DSITB advised that the Postmaster General, in maintaining its competitiveness as a CA, would have to react promptly to the market situation. The provisions of clause 29(2) would allow flexibility and enable him to adjust the fees as and when necessary. Mr Ronald ARCULLI and Mr Eric LI were concerned that Hongkong Post might subsidize the cost of issuing recognized certificates by operational revenue from the postal services. To address members' concerns, DSITB undertook to consider singling out the operation of Hongkong Post as a recognized CA in its overall Post Office Trading Fund Account, and also in the certified statements in respect of the same Trading Fund to be tabled in the Legislative Council annually.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

Clause 30 — Publication of issued and accepted certificates

Clause 31 — Recognized certification authority to use trustworthy system

Clause 32 — Presumption as to correctness of information

Clause 33 — Representations upon issuance of recognized certificate

Clause 34 — Representations upon publication of recognized certificate

Clause 35 — Reliance limit

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18. Referring to clause 30(1) and (2), Mr Ronald ARCULLI considered that provisions should be added to the Bill to enable the public to have access to real time information on whether a certificate was valid at the time of electronic transaction. In this connection, he also considered that the definition of "accept a certificate" in clause 2 should be expanded to the effect that a person who had used a certificate was deemed to have accepted the certificate. Other members supported Mr ARCULLI's views. DSITB undertook to provide a written response.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

19. In response to Mr Ronald ARCULLI's enquiry, DSITB undertook to provide justifications for adopting the criterion of "reasonably relies" in clauses 33 and 34.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)443/99-00(02) on 25 November 1999.)

Committee Stage amendments

20. Responding to the Chairman, DSITB advised that the Administration would provide the first draft of the proposed CSAs for members' consideration at the next meeting.

(Post-meeting note : The first draft of the proposed CSAs (LC Paper No. CB(1)443/99-00(06)) was circulated to members vide LC Paper No. CB(1)455/99-00 on 25 November 1999.)

IV. Any other business

Date of the seventh and eighth meetings

21. The Chairman reminded members that the seventh and eighth meetings of the Bills Committee were scheduled for 26 November 1999 at 8:30 am and 29 November 1999 at 2:30 pm respectively.

22. There being no other business, the meeting ended at 5:40 pm.

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12 September 2000