

立法會
Legislative Council

LC Paper No. CB(1)2040/99-00
(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 seventh meeting
held on Friday, 26 November 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 Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung

Members absent : Hon Ronald ARCULLI, JP
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 fifth meeting

(LC Paper No. CB(1)443/99-00(01) — Paper provided by the Administration to address the issues raised by members at the fifth 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 fifth meeting held on 18 November 1999. She advised that the Administration was still considering members' views on the drafting of clause 4 and would provide a written response later.

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(*Post-meeting note* : The Administration's response (LC Paper No. CB(1)465/99-00(01)) was tabled at the meeting on 29 November 1999 and was then circulated to members vide LC Paper No. CB(1)476/99-00 on the same day.)

II. Matters arising from the sixth meeting

(LC Paper No. CB(1)443/99-00(02) — Paper provided by the Administration to address the issues raised by members at the sixth meeting

LC Paper No. CB(1)443/99-00(03) — Paper provided by the Administration on "Provisions in the Electronic Transactions Bill applicable to a recognized certification authority")

2. DSITB briefed members on the Administration's response to the issues raised by members at the sixth meeting held on 22 November 1999 and the paper on "Provisions in the Electronic Transactions Bill applicable to a recognized certification authority".

Code of Practice

3. The Chairman suggested the Administration to consider including the Code of Practice in clause 44 to the effect that it was subsidiary legislation subject to negative vetting of the Legislative Council. In response, DSITB advised that it was not appropriate to do so as the Code of Practice only specified standards and procedures for recognized certification authorities (CAs) to follow, but not statutory requirements for a professional qualification.

4. The Chairman considered it important for the Administration to consult the industry on any amendments to be made to the Code of Practice in future and to keep the public informed of the amendments. He also considered that the relevant arrangements should be stipulated in the Bill. In this connection, he suggested the Administration to make reference to the relevant provisions of the Telecommunication (Amendment) Bill 1999. DSITB undertook to consider the Chairman's suggestion.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(1)465/99-00(02) on 27 November 1999.)

Suspension of recognition

5. In response to the Chairman's enquiry, DSITB pointed out that section 3.3.3 of the draft Code of Practice provided that if there was an incident which materially and adversely affected a recognized CA's trustworthy system or its recognized certificates

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issued, the recognized CA should, inter alia, inform the Director of Information Technology Services (DITS) immediately in respect of the incident. In those circumstances, DITS might suspend the recognition of the CA.

Review of the Electronic Transactions Ordinance

6. Responding to the Chairman, DSITB advised that the Administration would conduct a review of the Electronic Transactions Ordinance 18 months after its enactment, and that the Secretary for Information Technology and Broadcasting (SITB) would indicate this commitment upon the resumption of the Second Reading debate on the Bill.

III. Further submission received since the sixth meeting

(LC Paper No. CB(1)443/99-00(04) — Third submission from the Hong Kong Institution of Engineers (IT Division))

7. Members noted the third submission from the Hong Kong Institution of Engineers (IT Division) and that the Administration would provide a written response to the submission later.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)465/99-00(03) on 27 November 1999.)

IV. Clause-by-clause examination of the Bill

(LC Paper No. CB(1)230/99-00(03) — Consultation on the Draft Code of Practice for Recognized Certification Authorities

LC Paper No. CB(1)443/99-00(05) — Paper provided by the Administration on "Comments Received in the Public Consultation Exercise on the Draft Code of Practice for Recognized Certification Authorities")

8. The Bills Committee continued clause-by-clause examination of the Bill from clause 36.

Clause 36 — Liability limits for recognized certification authorities

Clause 37— Audit of performance of recognized certification authorities

Clause 38— Recognized certification authority to issue a certification practice statement

9. DSITB advised that the Administration proposed to move a Committee Stage

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amendment (CSA) to remove the reference to "audit" in clause 37. Members supported the proposed CSA.

Clause 39—Director may issue code of practice

10. DSITB advised that the Administration proposed to transfer the provisions of clause 39 to the new clause 27D and to delete clause 39 accordingly. Members supported the proposal.

11. At the suggestion of the Chairman, members agreed to discuss the paper provided by the Administration on "Comments Received in the Public Consultation Exercise on the Draft Code of Practice for Recognized Certification Authorities" at the next meeting.

Clause 40—Recognition of repositories

12. DSITB advised that the Administration proposed to transfer the provisions of clause 40 to the new clause 38A and to delete clause 40 accordingly. Members supported the proposal.

Clause 41—Obligation of secrecy

13. Referring to the Administration's proposed CSAs to clause 41, Mr Eric LI urged the Administration to further tighten the provision of the clause with reference to the secrecy provision in the Inland Revenue Ordinance (Cap. 112). DSITB agreed to further examine clause 41.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)465/99-00(02) on 27 November 1999.)

14. Mr Eric LI also pointed out the need to review clause 41 in the light of operational experience in future. DSITB undertook to cover clause 41 in the review to be conducted 18 months after the enactment of the Electronic Transactions Ordinance.

Clause 42—False information

Clause 43—Other offences

15. Members had no comment on clauses 42 and 43.

Clause 44—Regulations

16. In response to the Chairman's enquiry, DSITB advised that the regulations made under clause 44 were subsidiary legislation subject to negative vetting by the Legislative Council.

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Clause 45—Secretary may amend Schedules

Clause 46—Immunity of public officers

17. Members supported the Administration's proposed CSA to clause 46. *Schedules 1 and 2*

18. Members supported the Administration's proposed CSAs to Schedules 1 and 2.

V. Discussion on the draft Committee Stage amendments

(LC Paper No. CB(1)443/99-00(06) — Draft Committee Stage amendments to be moved by the Administration (First draft)

LC Paper No. CB(1)443/99-00(07) — Explanatory notes on the draft Committee Stage amendments)

19. DSITB briefed members on the English version of the draft CSAs to be moved by the Administration. She pointed out that the CSAs to clause 25 (Effect of revocation, suspension of recognition or expiry of validity of recognized certificate) were being drafted and would be submitted to the Bills Committee later.

Appeal mechanism

20. Mr Eric LI supported the proposed CSAs to clause 27. However, he considered it more appropriate for appeals against DITS's decisions to be handled by an independent committee instead of SITB. He requested the Administration to consider his view in the review to be conducted 18 months after the enactment of the Electronic Transactions Ordinance. DSITB noted Mr LI's views.

Interpretation of the term "on-line"

21. Referring to the new clause 38A(1), the Chairman asked whether the term "on-line" was used in other legislation and whether there had been any precedent court cases on the interpretation of the term. SALD advised that the term was commonly used and well understood in the context of electronic communication. Nevertheless, she undertook to provide a written response to address the Chairman's concern.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)465/99-00(02) on 27 November 1999.)

VI. Any other business

Date of next meeting

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22. The Chairman reminded members that the next meeting of the Bills Committee was scheduled for 29 November 1999 at 2:30 pm. DSITB undertook to provide the second draft of the proposed CSAs for members' consideration before the meeting.

(Post-meeting note : The second draft of the proposed CSAs was circulated to members vide LC Paper No. CB(1)465/99-00(04) on 27 November 1999.)

23. There being no other business, the meeting ended at 12:05 pm.

Legislative Council Secretariat
12 September 2000