

Letterhead of Horvath & Giles
鮑皓華 湛偉霖 律師行的信頭

Our Ret 99/MISC/DMCK

Your Ret **BY HAND**

Chairman of the Bills Committee
considering the Electronic Transactions Bill.
C/o Clerk to Legislative Council,
Legislative Council,
Jackson Road,
Hong Kong.

Dear Sir,

Electronic Transactions Bill

I refer to the captioned Bill, recently gazetted, in particular clause 16(1) relating to the validity of electronic contracts.

It would appear that there is some possibility of the provisions therein denigrating from the long established principle that an offeror is free to stipulate the manner in which acceptance must take place.

Instead, it may be argued that the statutory provision allows for an offer to be electronically accepted “unless otherwise agreed by the parties”.

A more appropriate wording for the sub-section may be:

“(1) For the avoidance of doubt, it is declared that in the context of the formation of contracts, unless otherwise *stipulated by the offer or* agreed by the parties, an offer and the acceptance of an offer may be expressed by means of electronic records.”

I would be grateful if you were to consider this matter at the appropriate time during the committee stage for the Bill.

Yours faithfully,

David A McKellar
DMCK/ml

cc: Margaret Ng, Legislative Councillor for Legal Functional Constituency (By fax: 28017134) Secretary for Information Technology and Broadcasting (By fax: 2827 6646)
Postmaster General, Post Office (By fax: 2868 0094)