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BY FAX / POST

12 April, 1999

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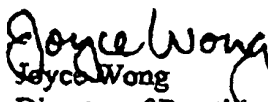
Dear Alan,

RE: DRAFT ELECTRONIC TRANSACTIONS BILL

I refer to your letter dated 22 March 1999 in connection with the proposed Bill and attach for your further action some comments from the Law Society's Management & Technology Committee.

In respect of the gazetted Bill, I would anticipate that the Law Society would have additional comments.

Yours sincerely,


Joyce Wong
Director of Practitioners Affairs
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COMMENTS ON THE DRAFT ELECTRONIC TRANSACTIONS BILL

It is noted that the UK government has recently released a detailed consultation document "*Building Confidence in Electronic commerce – a Consultation Document (URN99/642)*" which sets out the UK government's proposals for inclusion in its Electronic Commerce Bill. It can be found on the Internet at :-

http://www.dit.gov.uk/CII/.elec/elec_com.html

The Department reviewed this document?

The Committee's comments on the draft bill are as follows :-

1. **Fraud**

One of the biggest concerns to the public about electronic commerce remain the possibility of fraud, namely ensuring the reliability of the identity of persons from whom messages are received and to whom messages are sent and the possibility of tampering of messages between being sent and received. Will the bill contain specific provisions dealing with this issue?

2. **Certification Authorities**

a. The Bill does not appear to provide any regulatory authority to govern, on an ongoing basis, the activities of licensed Certification Authorities. Will this be solely handled by the Department of Information Technology and Broadcasting, and would it not be better if an independent regulatory body was established to deal with, for example, complaints made by consumers against particular Certification Authorities? Is the government prepared to accept responsibility/liability for negligently approving the recognition of a certification authority?

b. It is noted that the government, "in line with international practice" will allow recognised Certification Authorities to set reliance limits in respect of any certificates they issue. How is this to be calculated? In a commercial context, the Certification Authorities are likely to pass as much risk as possible on to consumers, which is unlikely to promote electronic commerce within Hong Kong. If the Government is to allow Certification Authorities to limit their liability, such limits should be quite generous, and only applicable in certain cases. There does not appear to be any reason why a Certification Authority should be allowed to limit its liability in circumstances of gross negligence or actual fault.

c. Following on from (b) above, as part of the voluntary recognition system that the Government envisages, is it practical to impose a condition, prior to recognition by the Government, that a Certification Authority obtain suitable liability insurance to cover its business activities?

d. How does the Government intend to deal with established foreign Certification Authorities e.g. Verisign. Will Verisign have to meet HK based criteria before being recognised? Is there any scope for mutual recognition of Certification Authorities recognised by regulatory bodies in other jurisdictions?

3. **Electronic Records**

Many organisations delete e-mails after a certain period of time for efficiency. "Electronic records" ultimately therefore be recorded as printouts physically stored in files. Is it intended that such a paper copy would meet any requirements that information should be presented or retained in its original form - if so, how are questions of integrity to be resolved?

4. **Legislation**

It is possible that the provisions of the draft bill when published may have an impact on other Ordinances and Conventions to which Hong Kong is a party - for example the Hague -Visby Rules for carriage of goods by sea and the Warsaw Convention for carriage of goods by air? Will any of the proposed clauses of the bill have any effect on Hong Kong's obligations under these treaties?

Management & Technology Committee
The Law Society of Hong Kong
9 April 1999