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16 June 1999

Ms Joyce Wong  
Director of Practitioners Affairs  
Law Society of Hong Kong  
3/F Wing On House  
71 Des Voeux Road Central  
Hong Kong  
[Fax : 2845 0387]

Dear Joyce,

**Re : Draft Electronic Transactions Bill**

I refer to your letter dated 12 April 1999. We have examined in detail the comments made by the Law Society's Management and Technology Committee on the paper concerning the draft Electronic Transactions Bill. Please note our response as attached. We hope to let you have the Bill and seek the comments of the Law Society shortly, after the Bill has been published.

Yours sincerely,

( Alan Siu )

for Secretary for Information Technology and Broadcasting

## Comments

(a) UK Government proposals

We have studied the UK Government consultation document on "Building Confidence in Electronic Commerce".

(b) Fraud

The building up of a public key infrastructure with the establishment of certification authorities will enhance security in the conduct of electronic commerce. With the use of digital certificate and public/private key mechanism, participants to electronic transactions will be able to authenticate the identity of other parties involved in the transactions, ensure the integrity and confidentiality of the electronic messages exchanged and guard against repudiation of the transactions made. The Bill will contain specific provisions to promote and facilitate the operation of certification authorities and to provide legal recognition for electronic records and digital signature.

(c) Certification authorities

There will not be a mandatory licensing scheme for the operation of certification authorities. We propose to introduce a voluntary recognition scheme. This will help safeguard the interest of the consumers. Under our proposal, the Director of Information Technology Services, who is an impartial party, will be the authority to grant Government recognition to certification authorities.

The Director will act in good faith in fulfilling his duty under the legislation to grant recognition to certification authorities. There will be usual provisions in the Bill for immunity of public officers under such type of situation. This will be no different from similar arrangements under other legislation.

It is a commercial decision for a recognised certification authority to set reliance limits on its certificates but the Director will take this into account in assessing whether the certificate authority or the certificate itself is trustworthy and whether recognition should be granted.

It is our intention that limitation of liability for recognised certification authorities will apply only in prescribed situations whereby the certification authorities have complied with the requirements in the Bill and have not acted negligently, etc.

The Director will consider the arrangements put in place or proposed to be put in place by a certification authority in covering its potential liability before granting recognition to the certification authority.

It is not our intention to draw a distinction between local and overseas certification authorities. All certification authorities will have to meet our criteria before recognition is granted.

We are examining the subject of mutual recognition with other certification authorities recognised by regulatory bodies in other jurisdictions. We also take an active part in the discussion of the subject in the Universal Postal Union.

(d) Electronic records

A printout can only be taken as a readable form of an electronic record and cannot be a substitute for a digitally signed electronic record. With the use of digital signature and public/private key mechanism, the integrity of the contents of the electronic record can be maintained.

(e) Legislation

There may be rules of law under which information has to be given, presented or retained or a signature is required, but for the time being, because of various reasons, it may not be suitable to adopt the electronic process in meeting these legal requirements. We will introduce an exemption mechanism in the Bill so that legislation may be exempt under such type of situation. Whether a convention to which Hong Kong is a party will be affected by the Bill depends on whether the convention falls under a rule of law. We have examined the Hague-Visky Rules for carriage of goods by sea and the Warsaw Convention for carriage of goods by air. They have been enshrined in the Bills of Lading and Analogous Shipping Documents Ordinance (Cap. 440) and the Carriage by Air Ordinance (Cap. 500) respectively. We will examine whether these Ordinances will be affected by the Bill and will take appropriate action to ensure that Hong Kong's international obligations under the corresponding conventions will continue to be met.