

香港大律師公會的信頭

**Letterhead of HONG KONG BAR ASSOCIATION**

Your Ref: ITBB/IT 107/4/1 (99) VIII

21<sup>st</sup> August, 1999

Secretary for Information Technology and Broadcasting  
Information Technology and Broadcasting Bureau  
1/F-2/F Murray Building  
Garden Road  
Central  
Hong Kong

Attn: Mr. Alan Siu

Dear Sir,

**Re: Electronic Transactions Bill**

With reference to your letter dated 8<sup>th</sup> July, 1999. The Electronic Transactions Bill has been considered by some members of the Bar whose views have been endorsed by the Bar Council. Enclosed please find the same for your consideration.

Yours faithfully,

Ronny Tong, S.C.  
Chairman

Encl.

# HONG KONG BAR ASSOCIATION

## Comments on the Electronic Transactions Bill

### Language of Clauses 5, 6, 7 and 8

1. Certain language used in the Bill appears a little strange and difficult to understand. In particular, the expressions “satisfies that rule of law” in Clauses 5(1) and 6(1) and “that rule of law is satisfied” in Clauses 7(1) and 8(1) are unsatisfactory as what is “satisfied” is not the rule of law but the requirement(s) under the rule of law. It is suggested that these expressions be redrafted and replaced.
2. In Clause 5(1), for example, it appears that the phrase “...an electronic record satisfies that rule of law...” may be better replaced by “...*shall be deemed to be in writing*...”. Similarly, it appears that in Clause 6(1), “...a digital signature of a person satisfies that rule of law but only if...” may be better replaced by “...*a digital signature of the person shall be deemed to be a valid signature only if*...”.
3. In Clauses 7(1) and 8(1), it appears that “...that rule of law is satisfied...” should be replaced by “...*that requirement is satisfied*...”.
4. Further, the wording of Clause 8(1)(a) is misleading in two ways:
  - a. “The information” and “the information contained in the document or record” contain the same meaning and the two cannot, and need not, be differentiated. Information cannot exist independently without a medium carrying it. The

Clause should be amended to read: 8(1)(a) “*the information remains accessible so as to be usable for subsequent reference*”.

- b. The wordings of Clause 8(1)(a) is further unclear as to whether the accessibility requirement refers to the documents, records or information to be retained, or to the electronic records generated from them. According to the “Explanatory Memorandum” at the end of the Bill, at paragraph 9, the legislative intent is for the latter to be the case. It should be clearly spelt out in the Clause so as to avoid ambiguity.

### **Clause 11 and 45**

5. The powers vested upon the Secretary to exclude rules of law etc. from the application of sections 5, 6, 7 and 8 by way of Clause 11 are too wide. The Secretary should not be given such wide-ranging powers, which should more properly and appropriately be exercised by the legislature.
6. Similarly, Clause 45 gives the Secretary power to amend Schedules 1 and 2 of the Bill. Since the Schedules contain matters and proceedings which are to be excluded from the application of Clauses 5, 6, 7 and 8, the power to amend the Schedules would amount to the exclusion of the application of the Clauses.
7. In the circumstances, the power to exclude the application of sections 5, 6, 7 and 8, as well as the power to amend the Schedules should be exercised by the legislature and not by the Secretary wielding what appears to be unfettered power.

## **Clause 13 and Schedule 2**

8. The list of proceedings under Schedule 2 is not sufficiently comprehensive or wide-ranging. For example, Sections 5, 6, 7 and 8 of the Ordinance should not apply to proceedings before the Barristers Disciplinary Tribunal and Solicitors Disciplinary Tribunal which should therefore be included in Schedule 2. There are proceedings before other tribunals which are of a judicial or quasi-judicial nature which should also be included in Schedule 2. Those proceedings should be identified and included.

## **Clause 16**

9. Clause 16(1), in its present form, may have the effect of interfering with the freedom to contract and the freedom of parties entering into contracts to dictate the terms upon which they will enter into contracts.
10. By providing that an offer and an acceptance of an offer may be expressed by means of electronic means “unless otherwise agreed by the parties”, Clause 16(1) appears to preclude an offeror from specifying, when making an offer, that the offer cannot be accepted by means of electronic records. It is not entirely clear whether this is intended. If so, this appears to be an unnecessary and unjustified intrusion into the well settled principle under the law of contract that an offeror can specify and require that the acceptance be expressed or communicated in a certain way.

## Clause 18

11. “Universal Standard Time” is not defined in the *Interpretation & General Clauses Ordinance (Cap. 1)*. The term is however referred to in section 67(2) therein, where Hong Kong Time is defined as “the time used for general purposes throughout Hong Kong namely, 8 hours... in advance of Universal Standard Time.”
12. According to information found on the internet web site of the Hong Kong Observatory, “The world has been divided into 24 time zones, each centered on lines of longitude at 15 degrees intervals so that every country falls within one or more agreed time zone. The Greenwich Meridian (also called Prime Meridian) lies at center of the first zone. Places west of this are one or more hours behind while those east of this would be in front of. In most places, local time differs from UTC by a whole number of hours, depending on the local time zone. **Hong Kong Standard Time (HKT) = Coordinated Universal Time (UTC) + 8 hours.**”
13. Further research reveals that, “**Coordinated Universal Time (UTC)**, is the international basis of civil and scientific time, implemented in 1964. UTC is widely broadcast by precisely coordinated radio signals; these radio time signals ultimately furnish the basis for the setting of all public and private clocks. Since Jan. 1, 1972, UTC has been obtained from atomic clocks. The unit of UTC is the atomic (SI) second.” (Taken from the online edition of the Encyclopedia Britannica).
14. Although it is unlikely that there would be any dispute over what the term “Universal Standard Time” actually meant, it is better that it be brought up to date and “*Coordinated Universal Time*” be used instead.

## **Clause 20**

15. The integrity of Certification Authorities is crucial. It may be preferable that instead of providing, in Clause 20(4), that the Director shall have regard to the various factors set out in Clause 20(4)(a) to (d), it be provided that those persons or companies listed in Clause 20(4)(a) to (d) be deemed to be unsuitable for recognition unless they otherwise convince the Director of their suitability.

### **A Compulsory Recognition System for Certification Authorities**

16. Finally, it is recommended that the application for recognition by Certification Authorities be made compulsory. It is envisaged that, in time, electronic commerce will become more and more prevalent and the need for Certification Authorities will gradually increase. The reason given by the government for a voluntary system of application for recognition is to limit government involvement to a minimum. Yet, the result of a voluntary recognition system is that there will be a two tier system of Certification Authorities, each regulated by a different set of rules, which is likely to give rise to confusion.
17. Furthermore, given the important role of the Certification Authorities, i.e. to ensure security in electronic transactions, the protection of consumer interest outweighs the need for a 'minimalist' approach. It is therefore suggested that the recognition system be made compulsory.

-End of comments -