

香港會計師公會的信頭

**Letterhead of HONG KONG SOCIETY OF ACCOUNTANTS**

**BY FAX AND BY POST**  
**(2869 6794)**

Our Ref.: C/ITG, M7564

1 November 1999

Hon. Sin Chung-Kai  
Chairman,  
LegCo Bills Committee on  
Electronic Transactions Bill,  
Legislative Council Secretariat,  
3<sup>rd</sup> Floor, Citibank Tower,  
No. 3 Garden Road,  
Central, Hong Kong.

Dear Sir,

**Electronic Transactions Bill**  
**Submission of the Hong Kong Society of Accountants**

In response to the invitation of the Bills Committee for submission on the captioned Bill, I enclose a copy of the Hong Kong Society of Accountants' submission on the Bill made to the Information Technology & Broadcasting Bureau (ITBB) on 8 September 1999. We have not received any reply from the ITBB to our submission, and we note that our submission has not been drawn to the attention of the Bills Committee as requested.

Since our submission of 8 September 1999, we have received further comments on the Bill from a number of members of the accounting profession, a supplementary submission will be provided to the Bills Committee within this week.

We would be pleased to make oral representation to the Bills Committee if the Committee consider that it will be helpful.

Yours faithfully,

WINNIE C. W. CHEUNG  
DIRECTOR OF PROFESSIONAL PRACTICES  
HONG KONG SOCIETY OF ACCOUNTANTS

WCC/ky  
Encls.

c.c. Mr. Eric Li

**BY FAX AND BY POST**

**(2511 1458)**

Our Ref.: C/COG(N), M6282

8 September 1999

Information Technology & Broadcasting Bureau,  
1-2/F, Murray Building,  
Garden Road,  
Central,  
Hong Kong.

Attn: Mr. Alan Siu

Dear Sir,

**Electronic Transactions Bill**

I attach herewith the official submission of the HKSA on the Electronic Transactions Bill for the attention of the Information Technology & Broadcasting Bureau and the Legislative Council Bills Committee studying this Bill.

Should you wish to further discuss the points set out in the submission, please do not hesitate to contact Winnie Cheung or Peter Tisman at the Society.

Yours faithfully,

LOUIS L.W. WONG  
REGISTRAR  
HONG KONG SOCIETY OF ACCOUNTANTS

LW/WCC/ay  
Encl.

c.c. Mr. Eric Li

**Hong Kong Society of Accountants**

**Submission on the Electronic Transactions Bill**

It is clear that the Bill is intended as basic enabling legislation to facilitate the development of e-commerce in Hong Kong. While we fully support the aim, we believe that at present the legislation leaves open some very important questions. The thrust of our comments is that more flesh needs to be put on the bones of this legislation (and the framework itself could do with being more self-explanatory). We appreciate the desire not to overregulate in a way which would stifle the development of initiatives in e-commerce. Nevertheless, we would suggest that in some areas it may be desirable to provide for a greater level of regulatory control.

**General considerations**

At the broad level, it is considered that a review of whole body of legislation on which this Bill may impinge needs to be conducted to ensure that there is overall consistency. The effect of clause 15 is to create uncertainty that core parts of the Bill may be disapplied in certain circumstances although it is not clear at this stage what they might be.

The Bill should also be clearer about what it is trying to do and how it intends to accomplish this. The problem is partly that the provisions of the Bill do not always seem to follow a logical order. For example, certain apparently important provisions (such as clauses 32-34) are buried towards the end of legislation.

More needs to be said about security issues, which are not covered in any great depth. We have written to the Secretary already outlining the “WebTrust” concept. Consideration should be given as to how forms of security arrangement such as this could be given recognition in the legislation.

**More detailed points**

*Interpretation*

We note that the term “electronic transactions” is not defined. Consideration should be given to providing some form of definition.

The definition of “trustworthy system” begs a number of questions. What criteria will be used to judge “reasonableness” in parts (a)-(c) of the definition and how will it be ascertained? What are “generally accepted security procedures” in part (d)?

#### *Clause 7*

In clause 7(1)(a) how can it be proven, and who may make the determination, as to whether there exists a “reliable assurance” as to the integrity of the information throughout the relevant period? The same applies in respect of establishing that “information has remained complete and unaltered”, under clause 7(2)(a). A set of guidelines or internal control procedures will need to be developed as a supplement to the Bill otherwise this provision will be too abstract.

#### *Clause 11*

It is noted that under clause 11(2) a notice, inter alia, as to the “manner and form” in which information is to be presented, etc. is not subsidiary legislation. Under subclause 11(6) “manner and form” is defined widely. Some assurance should be given that consultation will be conducted with affected parties before any substantial changes are specified in any given case.

#### *Clause 18*

Under clause 18(2)(a) it needs to be made clear what would constitute “designating an information system”. It is also suggested that it be stipulated that information should have been accepted for a reasonable period on a designated information system before it is deemed to have been received. While we recognise that under the Bill it is open to an addressee to define a more precise point at which receipt of an electronic record occurs, the proposed “default” arrangement provided for in clause 18(2) may create practical problems. An addressee may have access only to part of a system and it is possible that information reaching another part of the system may not immediately be retrievable by him. In (2)(a)(ii) how is “comes to the attention” of the addressee to be interpreted? When he has read the information? When he is aware that information intended for him is available on the system?

#### *Clause 19*

While we understand the desire not to overregulate in this area, we suggest that the public will not easily be able to distinguish between a recognised certification authority (“RCA”) and one which has not applied for recognition, or has been rejected or whose recognition has been suspended or revoked. This may lead to confusion. Given the concerns frequently expressed about security in relation to e-commerce, it is not clear that a voluntary regulatory system is to be preferred to mandatory licensing. At the least, certain minimum requirements ought to be applicable to any certification authority.

Clause 19(3)(b) regarding the report required to be furnished by an applicant to become an RCA, and the person required to prepare such a report, is vague and subclause (4) compounds this problem. The nature of the report and the person required to prepare it should be specified in more detail, either in the primary legislation or elsewhere. The discretion conferred upon the Director under subclause (4) is too open-ended. The basic grounds for exercising waivers should be indicated.

#### *Clause 29*

In his capacity as an RCA, the Postmaster General should enjoy exemption from the minimum number of requirements under the Bill if it intended that the Post Office should be competing on an equal footing with commercial providers, which presumably ought to be the case.

#### *Clause 35*

The concept of a “reliance limit” needs to be more fully explained.

#### *Clause 37*

The nature of an audit under clause 37, and the persons who may be approved by the Director as being qualified to conduct an audit, should be specified in more detail. It is considered that a set of procedures and standards/guidelines need to be developed for the audit of the operations and services of an RCA. This work could be commissioned from competent private sector practitioners.

#### *Clauses 38-39*

Under clause 38, an RCA is required to maintain a “certification practice statement”. Under clause 39, the Director is empowered to issue a code of practice specifying standards and procedures for carrying out the functions of an RCA. It appears that no such standards and procedures have been identified or developed at this stage. These documents will play a critical role in the overall regulatory framework and their contents should be specified at an early stage. Competent private sector practitioners should be able to assist in the development of relevant materials.

#### *Clause 41*

The exemption under clause 41(2) is too open-ended. As drafted, it would potentially undermine the effectiveness of the secrecy obligation under subclause (1).