

香港電訊的信頭

**Letterhead of CABLE & WIRELESS H K T**

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Our Ref: RALC-689/99

Clerk to Bills Committee

Bills Committee on Electronic Transactions Bill

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Hong Kong

Date: 5 November 1999

Dear Sir,

**Bills Committee on  
Electronic Transactions Bill**

We are pleased to submit our comments on the Bill as attached to the Bills Committee.

Thank you.

Yours sincerely,

EVA CHAN

Manager, Regulatory Affairs

## **Cable & Wireless HKT's Submission on the Electronic Transactions Bill**

Cable & Wireless HKT (CWHKT) is fully supportive of the policy objectives behind the enactment of the Electronic Transactions Bill which aims to promote e-commerce developments in Hong Kong. In relation to the Bill content, we would like to submit the following comments and seek further clarification.

1. Section 31 of the Bill provides that a recognized Certification Authority (CA) must use a trustworthy system in performing its services. We respectfully submit that the definition of "trustworthy system" as given in Part 1 of the Bill is unclear and unspecific. There is no objective criteria with regard to the definitions of "reasonably secure from intrusion and misuse" and "reasonably suitable for performing their intended function". We consider that clear criteria should be set out in the Bill.
2. Section 27 of the Bill provides that a CA aggrieved by a decision of the Director of Information Technology Services (DITS) may appeal to the Secretary for Information Technology and Broadcasting (SITB). We consider that the above appeal mechanism is insufficient. Firstly, the Bill has not specified the basis and criteria of SITB's decisions on the appeal. Secondly, the appeal mechanism should include an independent committee to consider appeals against the DITS's and SITB's decisions. Although the SITB's decision on the appeal is subject to judicial review (as stated in ITBB's response {LC Paper No. CB(1) 230/99-00(06)} to comments made by the Hong Kong General Chamber of Commerce), we consider that judicial review is not the same as an appeal on the merits. Hearing an application for judicial review, the Court will not substitute its own decision in place of the SITB's decision, but will consider only whether the process of reaching the decision was lawful and unlawful on the grounds of irrationality, bias, illegality or impropriety. Given that the criteria of SITB's decision on appeal is not clearly specified in the Bill, judicial review is unlikely to be a realistic avenue of redress in most cases.
3. There is too much discretionary power vested in the DITS in determining whether a CA is recognized. Though Sections 20 (3) and (4) of the Bill have set out the matters that DITS shall take into account in determining whether an applicant is suitable for recognition, the Bill, as drafted in the current form, is not specific in terms of the exact criteria for being recognized. We therefore consider that further elaboration regarding the criteria for recognition be given in the Bill. The Government may also consider issuing guidance note which sets out the criteria for recognition clearly.
4. Section 23 of the Bill provides that DITS may suspend recognition by giving notice of suspension with reasons stated to a recognized CA. However, it does not provide for the recognized CA to make representations to the DITS before the suspension as per Section 22 of the Bill. We consider that this right to a fair hearing should also be given to the recognized CA in the case of suspension of recognition.
5. Section 36 of the Bill sets out the liability limits for recognized CAs. We submit that there should be a statutory exclusion of consequential liability if the recognized CA negligently misrepresents or allows the misrepresentation of information on a recognized certificate.

6. Section 39 of the Bill provides that the DITS may issue a code of practice (COP) that all recognized CAs should comply with. However, the mechanism for future amendment to the COP has not been specified in the Bill. We consider that any amendment to the COP should subject to an open consultative process of which the recognized CAs and other industry participants are given the opportunity to comment on any change proposed by DITS before implementation.
7. Section 41 (2)(b) of the Bill does not preclude any person performing a function under the proposed legislation (which would include the DITS, the SITB and CAs) from disclosing information if the disclosure is for the purpose of any criminal proceedings or criminal investigation. We would like to highlight that this clause should not be able to be used to compel the production of private keys for reading confidential messages to the government authorities in Hong Kong.
8. Schedule 1 of the Bill defines the matters excluded from application of the proposed legislation, it is our view that the Schedule should be reviewed from time to time with a view to reduce the number of excluded items. This periodic review would foster the developments of e-commerce in Hong Kong if fewer areas are excluded from the ambit of this legislation.
9. The legal presumptions in the Bill only take effect with respect to one form of electronic signatures and only if the digital signatures are supported by a recognized CA. We submit that the reliance on digital signatures only is too narrow, and the UNCITRAL Model Law on Electronic Commerce should be adopted with respect to a broader definition of electronic signatures.
10. We seek to clarify the arrangement between local and international CA for mutual recognition of certification.