Response to Comments
made by the Hong Kong Society of Accountants

General considerations

- Under certain rules of law, in addition to the requirement to provide, present or retain information or to provide signature, there are other requirements which may not be electronically met by the transacting parties. For instance, where the provision of information or signature has to be accompanied by the payment of a fee, then unless the transacting parties are able to provide and receive the required information/signature as well as the required payment electronically, they cannot satisfy all the requirements under the rule of law in question. Clause 15 of the Electronic Transactions Bill clarifies that under such circumstances, Clauses 5, 6, 7 or 8 of the Bill will not apply to that rule of law.

- There are many examples in existing legislation of provisions which stipulate that they are to prevail over other legislation where there is an inconsistency. Clause 15 of the Electronic Transactions Bill operates on a similar basis.

- We note the comments on the order of the provisions in the Electronic Transactions Bill and consider the current order appropriate.

- We welcome the initiative taken by the Hong Kong Society of Accountants to provide a "Web Trust" service which will enhance security in electronic transactions. We have already established a dialogue with the Society on this initiative and will examine how the Government can help to promote the development of the service. However, we do not consider it appropriate to stipulate such service in law.

More detailed points

Interpretation

- The meaning of "electronic transactions" should be sufficiently clear and self-explanatory. We do not consider a definition in the Electronic Transactions Bill necessary. Neither is the term defined in the United Nations Commission on International Trade Law - Model Law on Electronic Commerce or in any other overseas legislation on electronic transactions.

- We note the comment on the definition of "trustworthy system". It is quite common that we refer to the test of "reasonableness" in legislation. This is essentially a matter of fact, to be decided having regard to the circumstances of the case. Should there be any dispute over this point, the issue will ultimately be settled by the court. The legislation of Singapore, Malaysia, Utah, etc. adopt a similar definition of "trustworthy system".

- "Generally accepted security procedures" are procedures which adhere to generally accepted security principles and standards in the industry. We envisage that there could be more than one set of acceptable procedures. Whether a particular set of procedures follows generally accepted security principles and standards in the industry is a matter of fact to be decided having regard to the circumstances of the case. Moreover, given that industry security principles and standards may change over time in step with technological developments, it would not be appropriate for the Electronic Transactions Bill to delve into specifics.

Clause 7

- We note the comment on Clause 7 of the Electronic Transactions Bill. Clause 7(2)(b) provides that the standard for reliability of the assurance referred to in Clause 7(1)(a) is to be assessed having regard to the purpose

for which the information was generated and all the other relevant circumstances. This is essentially a matter of fact to be decided having regard to the circumstances of the case. Should there be any dispute over this point, the issue will ultimately be settled by the court. We consider it inappropriate to stipulate a set of rigid guidelines or control procedures which would leave no flexibility for individual parties to operate. The United Nations Commission on International Trade law - Model Law on Electronic Commerce and the Electronic Transactions Bill of Australia contain similar provisions as ours.

- For the same reasons, we do not agree that we should stipulate a set of guidelines or internal control procedures for the purpose of establishing whether certain "information has remained complete and unaltered" under Clause 7(2)(a) of the Electronic Transactions Bill.

Clause 11

- In giving legal recognition to electronic records and digital signatures under the Electronic Transactions Bill, we have to ensure that when electronic records or digital signatures are submitted under various rules of laws to the Government, they can be received and accepted by the Government's systems. It is, however, practically not possible for the Government's systems to receive electronic submissions which have been prepared using all types of software and technologies. To facilitate electronic transactions in such circumstances and to avoid abortive efforts, we consider it essential to stipulate the format and procedures of submission so that the parties concerned will have clear guidelines to follow, e.g.

  (a) electronic records in English shall be encoded in the American Standard Code for Information Exchange;

  (b) electronic records in Chinese shall be encoded in either Big-5 or ISO 10646 coding scheme.

  These are detailed technical matters, which should be left to the Administration. We do not consider it appropriate to deal with such

matters by subsidiary legislation.

- In setting the requirements on format and procedures under various rules of law, we will carefully examine the technological standards used in the community and in specific sectors, and will review them regularly to take account of technological development. We will also widely publicize these specific procedural requirements under various rules of law, once decided.

Clause 18

- We consider "designating an information system" in Clause 18 of the Electronic Transactions Bill sufficiently clear. It means specifying an information system by the addressee to be the system for receiving electronic records for a particular purpose. This requires a positive and definite act on the part of the addressee to clearly specify the information system to which electronic information should be sent for the attention of the addressee for a particular purpose. We note that the United Nations Commission on International Trade Law - Model Law on Electronic Commerce, the Electronic Transactions Act of Singapore and the Electronic Transactions Bill of Australia adopt a similar approach.

- We do not agree with the suggestion to amend Clause 18(2) to the effect that information should have been accepted for a reasonable period on a designated system before it is deemed to have been received because this would cause uncertainty. Where the addressee has already designated an information system for the purpose of receiving electronic information for a particular purpose, it would only be reasonable that receipt of the electronic information should occur when the concerned electronic record is accepted by the designated system. Moreover, it is incumbent upon the addressee, in designating an information system for receiving electronic information, to ensure that he would have no problem in gaining access to the designated system for receiving the electronic information sent to him.

- Regarding the reference to "comes to the attention" in Clause 18(2)(a)(ii), we intend it to be the time when the addressee becomes aware that electronic information intended for him is available on the receiving

system.

Clause 19

- We note the comment on Clause 19 of the Electronic Transactions Bill. We consider that a mandatory licensing scheme for certification authorities would be unduly restrictive and difficult to operate. For instance, for those entities which provide certification service primarily to a closed network of users/clients with an established trust relationship (e.g. banks issuing digital certificates to their own clients), there is no a priori need to require them to obtain a licence before providing the service. Practically speaking, it would also be extremely difficult, if not impossible, to require those overseas certification authorities, which may already be offering their services to the Hong Kong market over the Internet, to obtain a licence from the local authority.

- Under our proposed voluntary recognition scheme, only those certification authorities whose operations follow the standards and procedures laid down by the recognition authority would receive recognition. We consider that such a voluntary recognition scheme, coupled with adequate publicity and public education efforts, should provide sufficient protection to consumers and will not lead to confusion or misunderstanding. Moreover, under Clause 43 of the Bill, it is an offence for an entity to make a false claim that it is a recognised certification authority. We note that Singapore, the United Kingdom and Denmark have adopted/proposed to adopt a voluntary recognition system similar to the one we have proposed.

- We note the comment on Clause 19(3)(b) of the Bill. It is our intention to address the details about the requirement to furnish a report in support of an application for recognition as a recognised certification authority (including the required expertise of the person who prepares such a report) in the code of practice for recognised certification authorities. We have published a draft of the code of practice for public consultation. A copy of the draft has been sent to the Hong Kong Society of Accountants for comment. We welcome any specific views on this aspect in the consultation process.

Clause 29

- The Postmaster General as a recognised certification authority under the Electronic Transactions Bill is only exempt from Part VII of the Bill on "Recognition of certification authorities and certificates by Director" which deals with procedures for seeking recognition and for the Director of Information Technology Services to suspend and revoke recognition. Apart from this, the Postmaster General has to comply with the other parts of the Bill in the same way as other recognised certification authorities.

Clause 35

- A recognised certification authority may specify different reliance limits for different types or classes of recognised certificates they issue and the certificates may be issued at different fees. This reliance limit refers to the monetary limit specified for reliance on a recognised certificate and the recognised certification authority is required to meet liability up to this limit in the same way as an insurance company is liable up to the amount insured. It is our intention to require in the code of practice for recognised certification authorities that the recognised certification authorities shall specify in the certification practice statement issued for a type of recognised certificates the implications of the reliance limit set for that type of certificates.

Clause 37

- The objective of the audit referred to in Clause 37 of the Electronic Transactions Bill is, as currently stipulated, to assess whether the recognised certification authority has complied with the provisions of the Electronic Transactions Ordinance applicable to a recognised certification authority and the code of practice for recognised certification authorities. Detailed requirements (including the required expertise of the persons who carry out such audits) will be addressed in the code of practice to be issued by the Director of Information Technology Services. The draft code of

practice has been published for public consultation and we welcome specific views on this subject.

Clauses 38-39

- We have published the draft code of practice for recognised certification authorities for public consultation. The code sets out the detailed requirements in respect of certification practice statements. We welcome specific views on these matters in the consultation process.

Clause 41

- We have carefully considered the formulation of Clause 41(2) of the Electronic Transactions Bill in the drafting process. Similar provisions also exist in other local legislation. We have also consulted the Privacy Commissioner for Personal Data who has advised that the provision is in order. We consider the exemptions provided reasonable and are sufficiently balanced to protect the privacy of individuals.